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A

CASES

OF

CONTROVERTED ELECTIONS

IN

THE TWELFTH PARLIAMENT

OF THE

United Kingdom,

BEING THE SECOND PARLIAMENT SINCE THE PASSING OF
ACTS FOR THE AMENDMENT
OF THE REPRESENTATION OF THE PEOPLE.

BY

JEROME WILLIAM KNAPP, Esq. D.C.L.

AND

EDWARD OMBLER, Esq. M.A.

BARRISTERS AT LAW.

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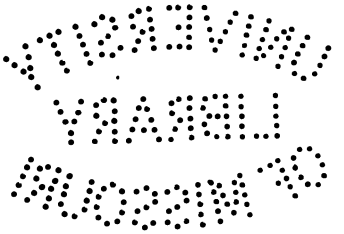

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JAMES ABERCROMBY,

ONE OF THE REPRESENTATIVES IN PARLIAMENT OF THE CITY OF EDINBURGH,

AND

Speaker of the House of Commons

IN THE

LAST PARLIAMENT OF THE REIGN OF WILLIAM IV.

AND IN THE

FIRST PARLIAMENT OF THE REIGN OF QUEEN VICTORIA,

THESE REPORTS

ARE

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ADVERTISEMENT.

PREVIOUS to the death of Mr. Knapp, which very unexpectedly occurred, the cases in this volume, to that of Cork County inclusive, were printed. Notes of the cases of Monmouth, Hull, Ennis, Penryn, Youghal, and Carlow County, were left by him in a very imperfect state, and in consequence of some difficulty arising respecting them, they were transferred to Mr. Falconer, who has prepared for the press such of the arguments as the notes of Mr. Knapp have enabled him to follow; and who has, also, extracted the facts of the cases from the Minutes of Evidence preserved in the House of Commons. The arguments of most importance the omission of which has been unavoidable, related to the acts of agency in the *Penryn case*, and to the opening of the register in the *Ennis case*, and in the *Carlow County case* of July, 1835. A complete report, however, of the argument upon the opening of the register in the *Carlow County case* of 1837, already prepared for the press by Mr. Fitzherbert, will be found to compensate for the loss of the previous argu-

ments upon this question. Such of the cases as Mr. Falconer has edited, he desires should be treated as correct *notes* of the facts and of the decisions, rather than as reports, the state of his materials not enabling him to put them into so perfect a state as that in which, under favourable circumstances, they would, perhaps, have appeared.

A report of the *Dublin case* is not included in this volume, and its publication is delayed upon account of the evidence taken by the commissioners in Dublin not having been detained in England after the sittings of the Committee terminated. It is intended by Mr. Falconer to publish a report of it among Reports of Electio Cases undertaken by him and by Mr. Fitzh bert, in continuation of the present series.

Thanks are due to the agents, in vari cases, for the assistance they have readil forded to the editors of these Reports especially to Mr. Chalmers of the House c mons, who, at the request of the Rig Mr. Abercromby, greatly facilitated t pletion of this volume.

9, Gray's Inn Square,
November 10, 1837.

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REPORTS OF CASES

OF

Controverted Elections.

CASE I.

BOROUGH OF DUNGARVON. (*a*)

The Committee was appointed on the 22d day of April, 1834, and consisted of the following Members:—

Thomas Gisborne, Esq. M.P. for North Derbyshire, *(Chairman.)*

Colonel Ellis Cunliffe Lister, M.P. for Bradford.
Geo. Rich. Robinson, Esq. M.P. for Worcester.
R. S. Carew, Esq. M.P. for Wexford County.
Col. Sir Wm. R. Clayton, Bt. M.P. for Great Marlow.
Wm. Fielden, Esq. M.P. for Blackburn.
J. L. Watkins, Esq. M.P. for Brecon.
Wm. Crawford, Esq. M.P. for London.
Jas. Wemyss, Esq. Captain R. N. M.P. for Fifeshire.
Jas. Wm. Scott, Esq. M.P. for North Hants.
Robert Stewart, Esq. M.P. for Haddington.

Petitioners:—Electors.

Sitting Member:—Ebenezer Jacob, Esq.

Counsel for the Petitioners:—Mr. Harrison, Mr. Follet, Mr. Wrangham.

Agents:—Messrs. S. Kildahl and Sons.

Counsel for the Sitting Member:—The Hon. C. E. Law and Mr. Kirwan.

Agent:—Mr. Power.

THE petition was by electors. The allegations in it were treating, bribery, (charged to have been "open and notorious in the borough and well-known to the

(*a*) The Reporters are indebted to their friend, Mr. Perry, for the notes in this and the following case.

electors,") and the employment of undue influence, threats, intimidation, and other illegal and improper means in order to procure the return of the sitting member, who had thereby obtained a colourable majority over Mr. Pierse George Barron, another candidate; it prayed a declaration that the election and return of the sitting member were wholly null and void, and that Mr. Barron was duly elected and ought to have been returned.

It appeared from the evidence that the sitting member came into Dungarvon, as a candidate on the repeal interest, with a Mr. John Dower, who was a brewer in partnership with his nephew Mr. Robert Dower, and was considered an influential person in the borough; that Robert Dower marshalled the procession on that occasion; that J. Dower seconded the sitting member, who, on certain occasions, was seen in company with both the Messrs. Dower; that a streamer suspended over the road, with the words on it " Repeal of the Union," was connected by poles with the houses of both the Messrs. Dower; that Robert Dower was active both in the court-house and elsewhere in the business of the election, as bringing up voters, &c.

The following cases of bribery by Robert Dower were each proved on the testimony of one witness:—

On the morning of the third day of the election (Friday) Mr. Barron, the unsuccessful candidate, having been on Thursday six a-head of the sitting member, Robert Dower went to the house of Cashman, a publican, who had previously promised to vote for Mr. Barron, had been canvassing for him, and had then actually some of Barron's voters in his house. He asked Mrs. Cashman where her husband was. She said, she wanted to speak to him, and they went, followed by the witness Ann Connery, (Mrs. Cashman's sister,) into the tap-room. Dower then asked her, whether Cashman would go and vote with him? She asked

for 20*l.* He said that was too much, "he had got them for 3*l.*, 5*l.*, and 10*l.*" Her reply was, "she would not let him vote for less than 20*l.*" He then said, Cashman was to come with him and he would give it. Cashman voted for the sitting member. Afterwards, on the same day, Robert Dower beckoned to Mrs. Cashman and the witness to come into the shop of Mrs. Terry, where, by his direction, Robert Terry (a clerk of the Messrs. Dower) gave Mrs. Cashman 20*l.*, which Dower described as the money he had promised.

In another case a witness, named Michael Kavanagh, accompanied a voter, John Carty or M'Arthy, to the brewery office, where Robert Dower asked the latter "if he came to give down his name to vote at the election?" He said "yes;" upon which Dower said, "the writs are up to-day, and I shall give no money; if you had come yesterday we gave 5*s.* to some, 10*s.* to more, and 1*l.* to some of your neighbours, but as soon as the election is over I will make it better to you than I did to any of them." Robert Dower then called his clerk to get the voter's name entered in the book "to vote for us," which was done at Robert Dower's house.

Evidence was also adduced of a supply of bread, beer, and spirits, "for nourishment" to voters during the election, upon written orders, varying in amount from 6*d.* up to 12*s.*, the orders having increased in value towards the end of the election. Some of these orders were signed by Robert Dower, others by persons of the names of Mahony and Lane, who also took an active part in the election on the part of the sitting member. The amount of the whole of these orders was 37*l.* 10*s.* David Keeffe, a publican and flour-dealer, who furnished this supply, proved that he told Mr. Robert Dower "he had a few orders in his name and did not like to take them," upon which Dower said, "I will see you righted for orders in my name." The bill had been sent into Mr. Dower but had not been paid.

Two witnesses, Thomas Collins and his mother, spoke to an act of bribery by Mr. Nicholas Maher, who, being called, distinctly denied it; and the evidence of Patrick Egan, Bartholomew Fitzgerald, and Susan Clifford, to other acts of the same description, was not deemed by the Committee to require any answer.

With regard to intimidation and undue influence, the only evidence given was, that one voter was forced from Mr. Barron's party and brought up in a tally for the sitting member, and a relation of Mr. Barron's, who had been called to prove that Mr. Robert Dower was an active friend and manager for the sitting member, on his cross-examination stated that a number of Mr. Barron's tenants came in. This examination then proceeded in these terms: " Mr. Law—Not having votes, but sticks? Answer, yes. Mr. Wrangham—Did you see sticks on the other side? Answer, I have the mark of a stick on my hat which I received from a person who, I believe, was employed as an agent on Mr. Jacob's side."

The Committee determined—

That Mr. Jacob was not duly elected a burgess to serve in this present parliament for the borough of Dungarvon.

That the last election for the said borough was a void election.

And, (in the usual form,) that neither the petition nor the opposition to it were frivolous or vexatious.

Poll-books from the custody of the Seneschal (the returning officer) are admissible in evidence.

The poll-books were produced by the Seneschal, the returning officer, who stated that they had been in his custody ever since the election, and were in the same state as when he received them; and that as Seneschal of Dungarvon, which was not a corporate town, he had the custody of the proceedings of the court-leet.

Mr. Law objected to the books being received in evidence as not coming from the proper custody, the Seneschal not appearing to be the officer having " the custody of the records," 1 Geo. IV. c. 11, s. 3, but ab-

stained from pressing his objection after an intimation that the feeling of the Committee was decidedly in favour of admitting the books in evidence. (*b*)

Evidence of an act of bribery admitted without hearing counsel upon the question whether there was sufficient proof of the agency to the sitting member of the person committing it.

On the first day of sitting, the Committee came to a resolution, which, on Mr. Law's objecting on the second day to evidence being received of the acts of Robert Dower before proof of his agency, was communicated to the counsel by the chairman to this effect: "that this question of admission of the proof of acts of bribery, without having had the agency to the sitting member of the party committing them proved, having been so frequently discussed, the Committee, when it arose, would decide upon it without hearing counsel." The room was therefore cleared, and the Committee decided to admit evidence of Robert Dower's acts, but on a subsequent occasion they declined to admit evidence of the acts of his brother E. Dower.

A petitioner, who has not entered into recognizances for the costs of the petition, is an admissible witness in support of it.

A witness, Matthew Longueville Godkin, having been called in support of the petition, Mr. Kirwan objected to his being examined, on the ground of his having signed the petition, and cited, in support of his objection, the Ilchester case. (*c*)

Mr. Wrangham submitted that, under the 9 Geo. IV. c. 22, s. 39, which was similar to the 53 Geo. III. c. 71, s. 19, and applied generally to all Committees, the previously existing disability had been removed. Here the witness had not entered into recognizances, and had therefore no interest in the question of costs.

The Committee decided in favour of the admissibility of the witness. (*d*)

(*b*) See *Colerain case*, Perry and Knapp, p. 507.

(*c*) *James Cooney's case*, 3d Dougl. 165.

(*d*) See Perry and Knapp, p. 277, notes *i*, *k*.

CASE II.

BOROUGH OF DUNGARVON.

The Committee was appointed on the 1st of July 1834, and consisted of the following gentlemen:

The Hon. C. Langdale, M. P. for Beverley, (*Chairman*).

Benjamin Lester Lester, Esq. M. P. for Poole.
Sir Edmund Hayes, Bart. M. P. for Donegal Co.
J. Evan Baillie, Esq. M. P. for Bristol.
Lord Arthur Marcus Cecil Hill, M. P. for Newry.
Samuel Crompton, Esq. M.P. for Ripon.
Sir Hugh Stewart, Bart. M.P. for Tyrone Co.
Captain R H. Gronow, M.P. for Stafford.
Sir John Hay, M. P. for Peebles Co.
John Saye Poulter, Esq. M.P. for Shaftesbury.
Lord Brudenell, M. P. for North Northamptonshire.

Petitioners:—Electors.
Sitting Member:—Ebenezer Jacob, Esq.
Counsel for the Petitioners:—Mr. Harrison and Mr. Follett.
Agent:—Mr. Kildahl.
Counsel for the Sitting Member:—The Hon. C. E. Law, Mr. F. Joy, and Mr. W. M. Best.
Agent:—Mr. G. C. Darling.

THE petition was by electors—it stated the former election and return of Mr. Jacob, the petition against his election and return, and the reference of it to a Committee, "that the said Committee having proceeded to try the merits of the said petition, direct evidence on oath was given before the said Committee that the said Ebenezer Jacob had, by his agents, friends, and managers, and persons employed on his behalf, been guilty of open bribery to procure persons having or claiming to have a right to vote for the said Ebenezer Jacob,

and to forbear to vote for the said Pierse George Barron, in consequence of which evidence the said Committee, on the 28th day of April last, resolved, and afterwards reported to the House, that the said Ebenezer Jacob was not duly elected to serve in parliament for the said town and borough, and that the said election was a void election;" and it then proceeded to state that "the only ground upon which the said report was so made was the said evidence of such bribery and corrupt practices; and the petitioners submit therefore to the House that the said Ebenezer Jacob was disqualified from being elected at the next subsequent election hereinafter mentioned as a member to serve in parliament for the said borough and town of Dungarvon." The petition then stated, that at the last election Mr. Barron and Mr. Jacob were candidates; that previously to the poll and upon the hustings it was publicly announced and declared, on the part of Mr. Barron and several electors of the borough, to the returning officer and the electors, that Mr. Jacob was, "by the report of the said Committee, and in consequence of the said bribery and corrupt practices, disqualified from sitting for or being elected to serve as a member of parliament for the said borough at the said election, and that the votes of all such as should vote for the said E. Jacob would be altogether lost and thrown away"; that a written notice was served upon the returning officer cautioning him against receiving the vote of any elector for Mr. Jacob, notwithstanding which he proceeded with the election; that printed notices were served upon all the electors who voted for Mr. Jacob, before they voted, informing them that Mr. Jacob was disqualified from being elected, and that if they voted for him their votes would be thrown away; notwithstanding which they did vote for him. It then charged bribery, treating, and intimidation, against Mr. Jacob and his friends at the present election, and after stating that he had obtained a colourable majority

on the poll, and had been returned, proceeded to pray that his election and return might be declared void, and Mr. Barron be returned in his place.

Mr. Follett tendered in evidence the petition, the minutes of evidence, and the resolutions of the Committee in the former case.

Mr. Law, on the part of the sitting member, objected to the reception of the minutes, and the point was argued at some length.

The ground of objection to the production of the minutes was, that nothing is to be intended to the prejudice of a party interested beyond what is expressed in a decision, and that the admission of the evidence would in effect afford an opportunity for reviewing that decision, and would lead to a new trial of the case; and the note of Mr. Luders on the *Ipswich case* (*a*) was cited.

The production of the minutes was supported on the grounds that Committees being only bound to find whether an election be void or not, if the minutes were not to be examined, a power would be given to them by the form of their resolution to prevent or to enable a member unseated from sitting on a second election, and that the petitioners would, by the rejection of this evidence, be prevented from proving the allegations in their petition, that evidence had been given of bribery and treating, in consequence of which the Committee had unseated Mr. Jacob.

The Committee decided that the minutes should be read.

The minutes of the former Committee were then put in and read. It was also proved that the sitting member had gained the election by a majority of twenty-four votes; that notice was given of his alleged disqualification to the sitting member and to the returning officer before the election, and that notices of it were also

(*a*) 1 Lud. 69, Note E.

served upon 194 of the sitting members' voters before they polled.

Mr. Harrison and Mr. Follett for the petitioners.

The grounds of the present petition are these:—1st, that the sitting member was ineligible to stand as a candidate at the election; 2ndly, that notice of his ineligibility was given to himself, to the returning officer, and to the electors. If both these grounds are proved, then Mr. Barron will be entitled to the seat.

The ineligibility of the sitting member is thus established; he was a candidate at the former election, and was returned in form to the House of Commons; a petition was presented against that return for bribery and treating, and the Committee appointed to try the merits of that petition unseated him; he is therefore ineligible, as we contend, to be a candidate on that vacancy. Whether the last Committee did or did not come to a proper decision it is not the duty of this Committee to determine; it is the nature not the propriety of that decision that they must consider. In cases of disqualifications, arising out of outlawry, perjury, or attaint, no Court ever inquires whether the outlawry has been properly incurred or the prior conviction rightly pronounced; all that is examined into is the fact of the conviction or the existence of the outlawry.

It will be perhaps conceded to us, that the sitting member would have been ineligible if the former Committee had come to a specific resolution declaring his election void on the ground of bribery. They have not made such a resolution; and this Committee are therefore called on to decide whether, when a petition has been presented against a sitting member containing allegations of bribery and treating, when the evidence given before a Committee has been wholly to prove bribery and treating, and when that Committee has found the election void, it is possible, because that Committee did

not in express terms declare why they so found it void, to suppose that they came to their resolution on any other grounds than those of bribery or treating, which in the judgment of the House of Commons, at any rate, if not by the law of the land, are the same thing; and, secondly, whether a member, unseated for those offences, and undoubtedly ineligible by the electors for the ensuing vacancy, if the Committee had declared the grounds on which they deprived him of his seat, is rendered eligible by their omission to do so. More important questions cannot be discussed before any tribunal; for should it ever be the received law of the House of Commons that a Committee can, by the mere form of their resolutions, no matter how great or extensive the bribery or corruption may have been, qualify or disqualify members to sit again, the effect will be, that upon evidence scarcely differing an iota, one Committee will, and another will not, incapacitate the member they have unseated from again becoming a candidate. Thus the punishment of bribery will not depend upon the law of the land, but the caprice of the Committee. In the *Liverpool case* (*b*) of 1831, a most extensive system of bribery was proved (*c*), in consequence of which the

(*b*) Not printed Minutes.

(*c*) In the statement of the argument of the counsel for the sitting members in the *Hertford case*, Perry *v.* Knapp, 1807, Mr. Ewart, who, after having been elected the member for Liverpool, was deprived of his seat by the decision of a Committee in March, 1831, is reported to have said, on being told of the bribery that was going on, "I cannot help it, the election can be conducted without it." Similar expressions are attributed to the same gentleman in the statement of the argument of counsel in the same case by two undistinguishable reporters, Messrs. Cockburn and Rowe, p. 205. Whatever expressions, however, may have been ascribed to Mr. Ewart, it is due to him to state, that the only dicta at all resembling those in question to be found in the minutes of that Committee, printed by order of the House of Commons, are at page 9 of the evidence of Mr. Yates, a highly respectable merchant, who after stating that both the rival candidates, Mr. Ewart and Mr. Denison, had called upon him about the same time, ten days before the opening of the poll, goes on to describe what passed at those interviews in these terms: "Each of

Committee declared the election void, but they passed no resolution against the sitting member, Mr. Ewart, his friends, agents, or supporters. Will it however be said, that after upwards of 50,000*l* or 60,000*l*. had been expended in bribery, that Mr. Ewart could have gone down to Liverpool to supply that vacancy. During the last forty years, indeed, from the second *Canterbury case* (*d*) down to the *Oxford case* (*e*) of the last session, where the resolution of the Committee simply declared the election void, there is no instance in which a member unseated for bribery or treating has attempted to stand on the vacancy thus occasioned.

Some lawyers, indeed, and among them Mr. Justice Blackstone (*f*), were formerly of opinion that the member unseated could not sit for the same place during that Parliament. The doctrine, however, has since been narrowed, but it is now the established law of Parliament, that a candidate deprived of his seat for either bribery or treating, is incapable of being elected or sitting for the particular vacancy so occasioned. This is

them solicited me for my vote and interest in the same words pretty nearly; Mr. Ewart asked me for my vote and interest first, I think. I said 'Sir, I cannot vote for you, because there is the same system of bribery going on in your favour which has been so much the practice in borough elections, and much in this borough in particular.' He replied, 'Sir, I am very sorry for it.' The same solicitation having been made by Mr. Denison, I made the same answer to him. Mr. Denison replied, 'I am excessively sorry, Mr. Yates, that human nature is so corrupt as to render those practices necessary.'" The examination then proceeds thus: Qu. "Have you told me, according to your recollection, the whole of the conversation that took place?" Ans. "Yes, I have, excepting that I saw the parties subsequently, and the same questions and the same answers followed." Qu. "Will you have the kindness to tell me when you saw them; was it before the polling began or after?" Ans. "It was a day or two before the polling began." Qu. "And subsequent to the conversation you have mentioned?" Ans. "Yes." Qu. "Twice you remonstrated against the bribery?" Ans. "Yes." Qu. "And you received that answer each time?" Ans. "Yes."

(*d*) Clifford, 357.

(*e*) 1 P. & K. 58.

(*f*) 1 Comm. 179.

laid down by Mr. Shepherd (*g*), Mr. Rogers (*h*), and Serjeant Heywood (*i*), and every other text writer of authority (*k*). The Treating Resolution of 1677, made a standing order in the same year (*l*), declared the giving of meat or drink to electors to be bribery; and the Treating Act, passed in 1695, incapacitated the party who either directly or indirectly should be proved to have given it, from serving *upon such election* in Parliament for the particular place for which he should have been returned. Upon this resolution, Mr. Tierney says (*m*), "I hope I shall never see recorded on the Journals of the House an insult to the meaning of those who passed that resolution, nor witness the indignity of a parliament of George the Third supporting or conniving at practices which a parliament of Charles the Second deemed a violation of the law and contrary to the ancient constitutions of elections." It will be even more extraordinary, if a Committee of the Reformed House of Commons should arrive at a less forcible decision against the offence of bribery and treating than one of an unreformed parliament; when too the resolution against bribery, of this and the preceding session, is couched in stronger terms than that which was passed in previous parliaments, and such resolutions are purposely passed for the guidance of Committees. (*n*)

The words "such election," in the resolution of 1677, and the Treating Act, mean clearly such election as shall satisfy the writ issued. Here the election has never been completed, no valid election has taken place since the late member's death; for Mr. Jacob's seat having been avoided, this election must be considered as a nullity. *Aldborough case* (*o*).

(*g*) Shepherd, pp. 54, 55.

(*h*) Rogers on Elections, p. 71, *et seq.*

(*i*) Heywood Co. cap. 7, p. 359.

(*k*) See 1 Roe on Elections, 142, and 1 Male on Elections, 356.

(*l*) 9 Journals, 482.

(*m*) Clifford, 162.

(*n*) See this and the previous annual resolution in the notes to the Oxford case, P. & K. 63, 64.

(*o*) 12 Journals, 19.

Mr. Douglas, in his notes on the *St. Ives case* (*p*), after giving a history of the Treating and Bribery Acts, and observing that many questions had arisen on the construction both of the statutes and of the common law of parliament concerning bribery, inquires "how far does the incapacity declared by the statute of William (*q*) extend?" and then proceeds thus: "The most obvious meaning of the words is, that the person who, in order to be elected, has been guilty of any of the different species of bribery there described, shall be incapable of sitting by a return made of him to the particular writ after the teste of which (or after the vacancy which gave occasion to it,) his offence was committed. By this construction, if, upon such persons being returned, and, in consequence of the proof of the offence, his election's being declared void, a new writ should issue, and he should stand again, and be chosen and returned without renewing the offence, after the teste of such new writ, he would be entitled to sit on this new election. The statute, however, has been understood otherwise, and the words "such elections" are explained to mean any election made to fill the particular seat for which the first writ issued, which, although a new writ issues, the second election is to do, for it cannot be said to have been supplied by the first, nobody having been thereby entitled to take possession of it. The determination in the case of Thetford in 1699, or rather 1700, seems to carry the incapacity still farther. On the 26th January, the House came to the resolution "that James Sloane, Esq., *in treating* the corporation of Thetford in the county of Norfolk, has been guilty of a breach of the late Act of Parliament for preventing expenses in elections." Then his election was resolved to be a void election; and a new writ issuing, Mr. Sloane was rechosen, and Mr. Soame the other candidate petitioned

(*p*) 2 Doug. 410—12, note (B). (*q*) 7 Will. III. c. 4.

against him. "And the question being put, that the said Mr. Sloane be capable of *serving in this present parliament* for the said borough, it passed in the negative (*r*). But, as far as I can understand them, the words of the statute do not warrant such a construction; much less can they mean that a person offending against the statute shall be for ever afterwards incapable of representing the place where the offence was committed; yet this seems to be asserted by a writer of great authority (Blackstone), where he says, "that it is enacted that no candidate shall, &c." (reciting the prohibition of the act), "on pain of being incapable to serve for that place in parliament (*s*)."

It may now, however, be considered as settled by a variety of decisions since the period when this note was written, that in every case where it appears on the minutes that the member elected has been guilty of bribery, or treating, or of corrupt practices, and his election has thereupon been declared void, the person whose seat has been so avoided is ineligible to stand on that vacancy. In the case of *Hindon*, in 1777, the election of General Smith and Mr. Brand Hollis was declared void for bribery. General Smith was re-elected, but upon petition to the House, founded on his incapacity to sit, his second election was avoided. The Attorney General having prosecuted both him and Mr. Hollis, by order of the House, they were convicted of bribery. When they were brought up for judgment, Mr. Serjeant Davey informed the court that his client, General Smith, had been a few days before re-elected for *Hindon* by a great majority of voices, and since there was not the least shadow or pretence for any charge of bribery at that election, he hoped that would operate with the court in mitigation of the punishment they might think fit to in-

(*r*) 2 Doug. 413.

(*s*) 1 Blackst. Comm. 179.

flict upon him; but Lord Mansfield interrupted the learned Serjeant in these words: "Do you think, brother Davy, that it mends your client's case, that he had the impudence to return a second time to the scene of his offences, and has reaped the fruit of his former corruption?" The sentence was for this reason alone aggravated, by requiring from General Smith security for good behaviour for three years.(*t*)

In the *Hindon case*, the ground of the decision of the Committee was stated in their resolutions; there are, however, other cases in which members unseated for bribery have been held incapacitated to sit on the vacancies thus occasioned; but there is a difference in the mode of proceeding before the second Committee. Where the first Committee has declared distinctly the ground on which the seat was lost, no evidence is necessary beyond the proof of their resolution; but in the other cases, the petition and minutes must be resorted to, to prove that the election could have been avoided for no other cause except that of bribery and treating. Thus in the *Honiton* (*u*) *case*, where the petition against Mr. M'Leod was for bribing, the Committee determined simply, "That Mr. M'Leod was not duly elected," and that the election "was void with respect to one of the burgesses." Mr. M'Leod was a candidate on the second election, but Mr. Wilkinson was returned; Mr. M'Leod petitioned. As soon as the case had been opened, the sitting member's counsel objected to Mr. M'Leod's going into evidence, on the ground that his former return having been avoided for bribery, he was ineligible to supply the vacancy: to prove this fact, they offered in evidence the minutes of the former Committee. The petitioner's counsel opposed this proceeding, on the ground that the Committee were bound first to hear the whole of their case. The Committee, however, resolved

(*t*) 4 Doug. 292. (*u*) 3 Lud. 162.

"That the sitting member might proceed to produce evidence of the ineligibility of Mr. M'Leod." The petition, the minutes, and the determination of the first Committee having been put in, a witness was called, who proceeded to relate the circumstances of the bribery, when the Committee stopped this evidence and resolved "That the counsel should not enter into parol evidence of the bribery which passed at the general election, on the part of Mr. M'Leod;" and their final resolution was, after hearing counsel on both sides, "That the Committee who are appointed to consider the former petition, having declared the election of Alexander M'Leod, Esq. void, (the said petition containing no other allegations than of bribery and corrupt practices,) it is the opinion of this Committee, that the said election was declared void for bribery and corrupt practices only," and "that the said Alexander M'Leod was not eligible to fill the vacancy occasioned by the said resolution:" and they afterwards determined that he should not be permitted to prove the allegations in his petition.

In the second *Norwich case*(*x*) it appeared that the petition on the first election of Mr. Hobart contained charges of bribery, treating and riots, and that the resolution was that of a void election. On Mr. Hobart's second election, some electors petitioned against him. An elaborate discussion took place as to the reception of the minutes of the proceedings of the former Committee, which were ultimately admitted in evidence. (*y*) The Committee in the end decided, that Mr. Hobart was duly elected. Different accounts have been given of this case, some have believed that the second committee considered the proof of riots given on the first petition to have been the ground of the determination of the first Committee. Mr. Luders, however, has stated two resolutions communicated to him by the chairman of the

(*x*) 3 Lud. 455. (*y*) Ibid. 499.

second Committee, from which it appears to have been their opinion, first, that the ground of the first decision was treating alone, and secondly, "That the disqualification, by the statute 7 & 8 Wm. 3, c. 4, so far as the same relates to treating is prospective to a future election." Upon this resolution Mr. Tierney, in the second *Southwark case,* observes, (z) "This resolution is still more extraordinary than the other; its best answer is its absurdity. To support it a distinction must be shown to exist between the act of King William and the treating resolution, on which that act is founded, both as to the offences they prohibit and the punishments they inflict; but there exists no such distinction." By the resolution of the House "treating" is declared to be bribery; by the act of William, no distinction is made between the giving of money and the giving entertainments; the beauty and efficacy of that statute is, that it blends in one common prohibition, and in one common punishment, the similar offences of bribery by money and bribery by treating. In his comments upon the *Norwich case* Mr. Tierney observes also, (a) "We have no legal evidence that these resolutions were ever passed by the Committee. Mr. Philips, the chairman, on whose authority alone the reporter has published them, is dead, and it no where appears, whether he took them down in writing at the time, or whether it was only from memory that he communicated them to Mr. Luders; but be that as it may, if the Committee ever did pass them, they did what was unlawful; they exceeded the limits prescribed to them; sworn to decide according to the law, they mutilated the law; they probably knew that they had done so; they were ashamed of their conduct, and felt it would not bear the light, else they would at the time, as they were bound to do, have communicated their resolution to the parties, all of whom they so immediately concerned;

(z) Clifford, 201. (a) Ibid. 204.

they would have ordered them, in the usual course of proceedings, to be entered upon their minutes, or have left some trace of them in the office, but there is nothing of the sort." Whatever authority however might at any time have been attached to these supposed resolutions of the second Norwich Committee, they have been since completely overruled by the decisions of the second Southwark and second Canterbury Committees. In the first case, a previous Committee had avoided the election of Mr. Thellusson, and had passed (*b*) a resolution that he had acted in violation of the 7 Wm. 3, c. 4; this resolution was made the ground of proceeding in the second Southwark case, and Mr. Tierney (the petitioner) was not called upon to produce the petition or the minutes. (*c*) The Committee decided that Mr. Thellusson was not duly elected and they seated the petitioner. In the first Canterbury case, (*d*) bribery having been proved at the election, against the sitting members, Mr. Baker and Mr. Sawbridge, the Committee came to a general resolution of a void election. (*e*) Mr. Baker and Mr. Sawbridge stood as candidates upon the vacancy thus occasioned, and they were returned by a large majority; a second petition was presented against them on the ground that they were ineligible, from their behaviour at the first election. The result of this petition was, that the second Canterbury Committee, (*f*) after hearing the minutes and resolutions of the former Committee, and proof of due notice of their ineligibility having been given to the electors, a second time deprived Mr. Baker and Mr. Sawbridge of their seats, and placed in their stead the two candidates who had the smaller number of votes.

This last case was considered to have set at rest the question now before this Committee, and we mention it

(*b*) Clifford, 81.
(*c*) Ib. 221, 222.
(*d*) Ib. 353.
(*e*) Ib. 356.
(*f*) Ib. 357.

with the greater confidence on account of the opinions of the very learned lawyers (*g*) which were given on that occasion, and which, having been afterwards read at the election, were proved in evidence, and appear on the minutes of that committee. We have then the

(*g*) The question put on which the opinions were given was, "Are the said John Baker and Samuel Elias Sawbridge, Esqrs. disqualified by the said determinations, or are they eligible to be re-elected representatives of the City of Canterbury at the ensuing election?"

From the allegations contained in the petition, the evidence offered in support of them, the admission of the counsel for Mr. Baker and Mr. Sawbridge, and the resolutions of the Committee, it must, I think, clearly appear, that the charges of bribery and treating have been established both against Mr. Baker and Mr. Sawbridge, the consequence of this, in point of law, it is equally clear, is the disqualification of both those gentlemen from being chosen to represent the City of Canterbury upon the present vacancy. By the resolution of the last Committee for the Borough of Southwark, treating alone was determined to create a disqualification, and by the undisputed law of parliament, and the uniform construction of the statute, bribery, if proved in a single instance, has always been deemed to render the person committing it ineligible for the place where the bribery was committed.

Thos. Plumer.

Whatever may be the true construction of the 7 W. 3, it is now too clearly ascertained by a number of decisions in point, that bribery is a disqualification on an election to fill up the vacancy occasioned by that bribery being proved. As to treating, the decision of the second Norwich Committee had distinguished between the two, and determined that treating merely did not incapacitate. The Southwark have lately overturned this decision, and made the second election of Mr. Thellusson void, on the ground that he was disqualified on the ground of treating. There are therefore contrary decisions, the last being in point in favour of the disqualification. This decision generally speaking, is against the opinion of the profession, the mere construction of what is commonly called the Treating Act. But this is a mixed case of bribery and treating. If it were the latter only, I think it probable another Committee might agree with the last. But under all the circumstances of the case stated, and on the general probability of a decision upon them, I am clearly of opinion that both these gentlemen would be held to be disqualified.

Robt. Dallas.

Considering these determinations of the Committee as applied to the petition of the electors, and to the evidence given in support of it, I am of opinion that Mr. Baker and Mr. Sawbridge cannot be re-elected to represent the City of Canterbury in parliament on the present occasion.

C. Abbott.

authority of Lord Tenterden, C. J. Dallas, and Sir Thomas Plumer, for the law as we have stated it. All three agree that where the conviction has been for bribery and treating, the members unseated, although they should be again elected, cannot sit. This doctrine has been of late years carried to a greater extent; for in the *Camelford case*(*h*) it was decided that bribery and treating, even by unsuccessful candidates at an election which was subsequently avoided, incapacitated them from being elected on the vacancy.

It will however be contended, that the former petition contained, in addition to the allegations of bribery and treating, others of "undue influence," "threats," and "intimidation," on which Mr. Jacob might have been unseated. It becomes necessary therefore for the Committee to look into the evidence, in order to satisfy themselves that the last Committee came to their decision on the grounds of bribery and treating alone. They will observe, that no evidence was offered in support of any other allegation, and will not that be conclusive proof of the fact contended for? Can it be said, that a Committee of reasonable men would have unseated the sitting members on the ground of threats or intimidation, on such evidence as the few disjointed facts with respect to it that came out in the course of investigation of other matters? And if they did not do so, they must have found him guilty "by himself, his agents, friends, and managers" of bribery or treating.

The remaining point is the right to the seat. There was a majority on the poll for the sitting member of twenty-four votes. Notice was given on the Monday before the election to the returning officer, and to the sitting member, besides which notice was given to all his voters but one, 131 in number, in one of the booths, and to sixty-three of them in the other. No point is now better settled than that where notice of disqualifi-

(*h*) Cor. & Dan. 239.

cation has thus been given of members of parliament, as in the second *Canterbury* and *Leominster cases*, (*i*) the votes afterwards given are thrown away.

Mr. Law for the sitting member.

The petition upon which the former Committee resolved, that the election of Mr. Jacob was void, contained three distinct charges; first, of bribery, secondly, of treating, thirdly, of intimidation and undue influence. Evidence was laid before that Committee in support of all those charges on the one side, in rebuttal of them on the other, and each and all of them, if proved, was sufficient to have justified that Committee in their determination that the election was void. They have, however, abstained from stating in their resolution, upon which of those charges they arrived at that determination, and it remains therefore for the present Committee to consider whether they will (as they are called upon by the petitioners) boldly decide that the intention of their predecessors was to have avoided the election on the ground of bribery, or whether they will give the sitting member the benefit of the doubt that it was avoided upon either or both of the other two charges, neither of which would, as we contend, incapacitate the sitting member from being elected a second time.

It has been contended at the bar, that if the present Committee should be of opinion that the former Committee did not avoid the election on the ground of bribery but of treating, they might still declare the present election void. This, however, is a point which the petitioners ought not to be permitted to make. By the law and practice of Committees they are confined to the allegations of their petition. In this they have alleged, that the former election was avoided on the ground of "bribery and other corrupt practices." A statutable offence, as treating, cannot be included under the vague term of "other corrupt practices;" and the

(*i*) Cor. & Dan. 1.

petitioners ought not therefore to be allowed to call upon this Committee to presume that the election was avoided upon other grounds than what they have alleged. They must prove their allegation, that the election was avoided upon the ground of bribery alone, and if the evidence which they have produced is such as to leave any doubt on the minds of this Committee, that it was avoided on other grounds, the sitting member is entitled to the benefit of that doubt. Mr. Luders has, indeed, in his learned note upon the *Ipswich case* (*k*), strongly argued, that even if the allegations in evidence upon a petion relate to bribery alone, and a Committee should find the election to have been void, yet unless they also specially declared in their resolution that they have so avoided it on the ground of bribery, the member who thus lost his seat would be capable of being immediately re-elected, and he establishes this proposition by references to numerous cases in the Journals of the House.

In all the cases indeed which have been cited by the other side, the general finding of a void election has been accompanied by special reports to the House of bribery and treating, or of one of them, or else the charges in the petitions, and the evidence adduced in support of them, have related solely to those two offences. In the *Hindon case* (*l*), relied upon by the petitioners, General Smith was prosecuted for bribery by command of the House, in addition to the adjudication of the Committee, which avoided the election on that specific ground. In the *Honiton case*, the petition of the electors "contained different charges of bribery against Mr. M^c^ Leod, and nothing else" (*m*); and the resolution of the second Committee was to that effect (*n*). No evidence was there offered, except as to bribery or treating. The first case of *Norwich* (*o*) arose on the petitions of

(*k*) 1 Luders, note, p. 70.
(*l*) 4 Doug. 292.
(*m*) 3 Luders, 163.
(*n*) 3 Lud. 165.
(*o*) Ib. 441, 445.

Sir Thomas Beevor and of certain electors, which alleged that the sitting member had been guilty of bribery and treating, and that he had disturbed the peace of the city by riots and tumults. It appeared that between 4000*l.* and 5000*l.* had been paid for the expenses of the election. The decision of the Committee was indeed general, " that the election was void," but the minutes disclose no charge on which any other evidence was given, except as to bribery or treating. The second *Norwich* Committee (*p*) resolved, " that it does not appear to the Committee from the minutes, that the fomer Committee adjudged the seat void on the effect of any other evidence than that of treating. It is observable that Mr. Gally Knight, who had sat on the first Committee, was a member of the second, and he must have known the grounds of the former decision.

In the first *Southwark case* an express resolution had been passed, that Mr. Thellusson had been guilty of treating. In the first *Canterbury case* the petition was on the grounds of bribery and treating, (*q*) and both of them were brought home to all the four candidates, and by the retirement of their counsel the sitting members might be said to have suffered judgment to go by default; so that there also is to be found a palpable adjudication. The *Kirkcudbright*(*r*) Committee, by a specific resolution, found Mr. Gordon guilty of bribery. The *Camelford case*(*s*), independently of its having been a case of bribery only, was decided on the ground that Mr. Allsop had been a party to the corruption which occasioned the avoidance of the first election. Thus the subsequent Committees had in each case a clue furnished them to enable them to ascertain the meaning of the verdict given by the Committee which preceded them.

(*p*) 3 Lud. 500. See Mr. Tierney's observations on the second *Southwark case*, 200—205.

(*q*) " And other corrupt and illegal practices." Clifford, 353.

(*r*) 1 Lud. 72, in note.

(*s*) Corb. & Dan. 239.

In none of them was there any doubt for the re-elected member to avail himself of.

If, however, the petitioners are allowed to contend that the present election must be declared void, should this Committee be of opinion that the preceding one was avoided by the former Committee, on the ground of treating, we deny that either a proper interpretation has been put on the Treating Act, either by them or the Committees on whose authority they rely, and we contend that even if that interpretation be correct, the doctrine which it establishes has no bearing upon the present case.

The second section of the 7th Wm. 3, c. 4, (by which treating was made a statutable offence in England,) after declaring that the party found guilty of treating shall be "incapacitated upon such election to serve in Parliament for such county, city, &c." contains the following provision, "and that such person or persons shall be deemed and taken no members in parliament, and shall not act, sit, or have any vote or place in parliament, but shall be and are hereby declared and enacted to be, to all intents, constructions and purposes, *as if they had never been returned or elected members for the parliament.*" Upon these last words Mr. Justice Blackstone fell into the mistake that the member was incapacitated to sit for the same place for the whole parliament, a mistake which has been pointed out by Professor Christian, in his note on that passage (*t*), in which he clearly shows the meaning of the statute to have been that treating should only vacate the election at which it was practised. Mr. Douglas in his note on the *St. Ives's case* (*u*), expressly supports this construction, and Chief Justice Dallas in the very opinion (*v*) quoted on the other side states "the general opinion of the profession is against the decision in the second *Southwark case*," at the same time that he leaves it as matter of discretion for the parties whether

(*t*) 1 Bl. Com. 172, in notis. (*v*) Ante, p. 19.
(*u*) Ante, p. 14.

they will risk the possibility of a similar decision. Thus the opinion of lawyers in general may be said to be opposed to the doctrine contended for by the other side. It is impossible indeed to construe the Treating Act by reference to the resolution of 1677, as has been asserted. The statute law of the land cannot be altered or extended by a resolution of the House of Commons. The distinction between bribery and treating is now indeed well established. Bribery is a crime at common law, which may be committed and punished at any time. Treating is an offence created by the statute, and can only be committed between the teste of the writ when a parliament is summoned or the occurrence of a vacancy when it is sitting, and the election.

The decisions of Committees upon the whole coincide with the opinions of the profession. In the second *Norwich case* the Committee negatived a resolution that the statute 7 & 8 Wm. 3, c. 4, so far as the same relates to treating, is prospective to a future election.(*y*) In the second *Southwark case*, however, Mr. Tierney appearing as a popular candidate, and litigating a popular question, was successful in misleading the Committee into a decision contrary to that of the second *Norwich*. Thus the decisions of Committees for and against the point contended for on the other side, are equally balanced, for the second *Canterbury case* is no authority as to avoidance of an election for treating, as in that case the sitting members, by withdrawing their counsel, had in effect suffered a judgment by default against themselves on the ground of bribery as well as treating. So little was the law in 1805 understood to be settled, as has been stated on the other side, that although Mr. Mainwaring was unseated by the first Middlesex Committee on the ground of treating, yet he stood and was elected on that very vacancy, and in neither of the two petitions(*z*) presented against his

(*y*) 2 Peck. 32. (*z*) 2 Peck. 338. & 340, note.

second return, does there appear to have been any allegation that he was incapacitated by the resolution of the first Committee. It is useless to combat the supposed case of Mr. Ewart having attempted to stand for Liverpool after the avoidance of his election in 1831; but it may be remarked, that there was a special report to the House in that case of the bribery which prevailed during the election.

The whole of the authorities and cases which have been cited relate however to the English statute of treating, which is not the statute on which the Committee ought to try the question. It remains to be seen whether the Irish statute, 35 Geo. 3, c. 29, which alone applies to this case, is liable to the same interpretation.

The 19th section of that statute provides "that no person to be thereafter elected to serve in parliament for any county, city, town, or borough, shall, after the teste of the writ of summons to parliament, or after the vacancy shall have happened, to supply which the election shall be held, by himself, his friends, or agents, or any person or persons employed on his behalf, directly give, present, or allow to any person or persons having a vote or votes in such election, any money, meat, drink, entertainment or provision, cockades, ribands, or any other mark of distinction, or make any present, gift, reward, or entertainment, or shall at any time hereafter make any promise, agreement, obligation, or engagement, or give or allow any money, meat, drink, provision, present, entertainment, or reward, to or for any such person or persons in particular, or to any such county, city, town, or borough in general, or to or for the use, advantage, benefit, employment, profit, or preferment of any such person or persons, place or places, in order to be elected, or for being elected to serve in parliament for such county, city, town, or borough; and that every person or persons so giving, presenting, or allowing, making, promising or engaging, doing,

acting, or proceeding, shall be and is and are hereby declared to be disabled and incapacitated to serve in parliament, upon such election for such county, city, town, or borough." There are no words, therefore, in this statute, such as those in the latter part of the English statute, that the persons who had been guilty of the offences therein mentioned, "should not act, sit, or have any vote or place in parliament." It was upon these words that Blackstone formed his erroneous conclusion which has before been mentioned, and it was probably upon these that the decision of the second *Southwark* Committee was founded. At any rate there is no decision whatever of any Committee, that a member who has lost his seat for the breach of the provisions of the 35 Geo. 3, is incapacitated from being elected on that vacancy. Considering that the mere gift of a cockade to a voter would, under that statute, avoid an election, such a determination would be equally rigorous, as it would be unsupported by law.

Even, however, should the Committee be of opinion that the sitting member ought to lose his seat, if the determination of prior Committees proceed on the ground of treating as well as of bribery, still it must be remembered, that they might have come to that determination on the ground of intimidation. It is true that there was not much evidence with regard to it, but there was some, and it is impossible, especially when the weight of prejudice in England against the supposed manner in which elections are managed by gentlemen standing in the same interest as the sitting member, is taken into account, to say what effect it might have had on the minds of the former Committee. No decision has ever been made to incapacitate a member from standing again on an election avoided for intimidation.

Bribery, if imputed as a disqualification, must be either specifically found, or at any rate clearly collected from the evidence. If the former Committee had

found Mr. Jacob "guilty of bribery at the last election," there would not have been any opposition to the petition; but when several topics of discussion were presented to that Committee, and nothing exists from which it can with certainty be collected, on which of them the decision was given, this Committee cannot surely be called upon to presume against a member returned to the House by the majority of the borough, that it was given upon the only ground which would disqualify him from retaining his seat.

Mr. Harrison in reply upon the authorities cited by Mr. Law.

The note of Professor Christian on Blackstone is erroneous; he does not give any reason for the opinion he there advances. There is no ground for making any distinction between the construction of the 7 & 8 W. 3, c. 4, and the 35 Geo. 3, c. 29, s. 19, for the important words, that the persons guilty of treating shall be and are hereby declared to be disabled and incapacitated to serve in parliament for such county, city, town or borough, are to be equally found in the latter as in the former statute. It is upon these words, that Mr. Justice Blackstone formed his opinion, and that the decisions of the second *Southwark*, second *Canterbury*, and so many other earlier Committees have proceeded. The words in the 7 & 8 Wm. 3, which are omitted in the 35 Geo. 3, are mere surplusage, and were no doubt not inserted in it for that reason.

7th July. The Committee determined that Ebenezer Jacob, Esq. was duly elected a burgess to serve in this present parliament for the borough of Dungarvon.

They also resolved that neither the petition nor the opposition to it were frivolous or vexatious.

CASE III.

COUNTY OF MONAGHAN.

The Committee was appointed on the 2nd of July 1834, and consisted of the following gentlemen:

Lord Robert Grosvenor, M. P. for Chester City, (*Chairman.*)

Lewis Weston Dillwyn, Esq. M. P. for Glamorganshire.

The Earl of Lincoln, M. P. for South Nottinghamshire.

John Palmer Bruce Chichester, Esq. M. P. for Barnstaple.

Thomas Bish, Esq. M. P. for Leominster.

Lord Viscount Lumley, M.P. for North Nottinghamshire.

Richard Walker, Esq. M. P. for Bury.

Thomas Law Hodges, Esq. M. P. for West Kent.

James Oswald, Esq. M. P.(*a*) for Glasgow.

Philip Henry Howard, Esq. M. P. for Carlisle.

Charles James Barnett, Esq. M. P. for Maidstone.

Petitioners:—Electors in the interest of Edward Lucas, Esq.
Sitting Member:—The Hon. Henry Robert Westenra.
Counsel for the Petitioners:—The Hon. Charles Law, Mr. Follett, and Mr. Wrangham.
Agent:—Mr. W. Stephens, Bedford Row.
Counsel for the Sitting Member:—Mr. Harrison and Mr. Serjeant Merewether.
Agent:—Mr. Baker, Spring Gardens.

THE petition was by electors in the interest of Mr. Lucas. It prayed that the election and return of Mr. Westenra might be declared null and void, and that Mr. Lucas might be declared to have been duly elected, and ought to have been returned. It contained allega-

(*a*) The attendance of Mr. Oswald was excused by the House on account of ill health.

tions that persons not entitled to vote had voted for Mr. Westenra, and also charges of bribery, treating, and intimidation against him, which were not gone into, as the case resolved itself into a scrutiny.

4th July, 1834.

John Agnew's case.

Service of a notice to produce a lease on the wife of a voter at his house held insufficient to let in secondary evidence.

The voter in this case was registered, and voted as a leaseholder. In order to prove the service of a notice upon him to produce his lease, a witness was called, who deposed that he had served it on the voter's wife at his house.

Mr. Harrison contended that the service was not sufficiently proved, and cited *Soughlehan's* case (*b*), and the proceedings of the House of Lords in the case of William Oram, one of the witnesses summoned to attend and give evidence to prove the preamble of a bill at that time depending "for the prevention of bribery, corruption, and illegal practices in the election of members for the borough of Warwick." In that case the summons had been served upon the wife (*c*), but so far was the House of Lords from considering such a service a sufficient service, that it was not until it had been proved from the evidence of his wife and other persons, that he was purposely absenting himself from home in order to avoid the service, that they made an order that service at his house should be deemed good service on him. Here there was no proof that the voter had ever returned to his house or seen his wife, or if he had seen her, that she had given him the notice.

Mr. Wrangham:—Service at the house is always held sufficient service in courts of law in civil actions (*d*). The House of Lords required the additional evidence in Oram's case, because they intended to proceed against him criminally if he should not appear, as they in fact did by ordering him to be taken into the custody of the

(*b*) 1 P. & K. 522.

(*c*) See the printed evidence on this bill, pp. 67, 169, 175.

(*d*) See Starkie on Evidence, 2nd edition, vol. 1, p. 345; vol. 2, p. 531.

Serjeant-at-Arms on his non-attendance after the second service (*e*), and greater strictness is always required in criminal than in any other cases. It was, besides, clearly proved in that case by the wife's own testimony that Oram was absent from home, and she did not know where he was. Here there was nothing to rebut the presumption that the man returned in the usual way to his own home from wherever he might happen to have been absent when the notice was served.

The Committee determined that the service of the notice was not proved in this case.

Patrick M'Caffrey's case.

7th July, 1834. No objections permitted to be taken before a Committee which had not been taken before the registering barrister in Ireland.

It appeared by the poll-books that the voter had voted on the production of his certificate. His original affidavit was produced to the Committee by the Clerk of the Peace.

Mr. Serjeant Merewether objected to the validity of the vote being discussed, on the ground that the registry and certificate were conclusive of his right to vote.

The Chairman, after some discussion, stated it to be the wish of the Committee that two questions should be discussed at the same time; first, whether the registry was final as to the validity of a vote; 2ndly, whether it was only final as to those votes, the validity of which were not disputed before the assistant barrister.

Both these questions were then argued by Mr. Serjeant Merewether in support of the conclusiveness of the register in all cases, and by Mr. Follett in support of the power of Committees to examine generally into the validity of all registered votes. The principal cases referred to were the *Longford* (*f*), *Galway Town* (*g*), *Galway County* (*h*), *Clonmel* (*i*), and *Carlow* (*k*), and the

(*e*) See printed evidence, pp. 295, 296.
(*f*) 1 P. & K. 179.
(*g*) Ib. 308.
(*h*) 1 P. & K. 512.
(*i*) Ib. 427.
(*k*) Ib. 394.

authorities and arguments made use of were the same as had been cited and used in those cases.

The determination of the Committee was "that the Committee will not go into evidence affecting votes, unless the objection was urged before the court of the registering barrister at the time of the registration.

Evidence permitted to be given before the Committee which had not been given before the registering barrister.

A witness was then called, who swore that he attended at the registering barrister's court and objected to the registering of this voter on account of the deficiency of the value of his leasehold. This witness also deposed that the only evidence taken before the registering barrister was that of the voter himself, who swore that the land he held was worth £3 an acre per annum, and that such was the state of the country at the time, that every person the witness applied to to contradict this account was afraid to come forward. After this, another witness was called to prove its real value. An objection was taken to the reception of his evidence, on the ground that he had not been examined before the registering barrister. The arguments used by Mr. Serjeant Merewether in support of this objection, and by Mr. Follett in favour of the admissibility of the evidence, were nearly identical with those which were urged on the same point before the *Clonmel* Committee (*l*), but much stress was laid on the fact of witnesses having been afraid to come forward to contradict the voter's statement.

The Committee overruled the objection, and directed the Counsel to proceed with the examination of the witness.

The following, which were the principal facts proved in this case, also affected a large body of voters, tenants of the Marquis of Bath, in the barony of Farney, who had been objected to by the petitioners, on the grounds

(*l*) P. & K. 429.

" that each of such persons was registered and voted as a leaseholder under a lease purporting to be granted to such voter and other persons jointly, or as joint tenants; whereas he was in the actual occupation of a part only of the lands and tenements comprised in such supposed lease; and that each of such joint tenants was liable for the payment of the whole rent reserved in such lease for a sum far exceeding any beneficial interest which each may have in that portion of the said lands and tenements actually occupied by himself; and that the portion of the said lands and tenements of which he was in the actual occupation, was not of the clear yearly value of 10*l.* over and above all rent and charges payable out of the same, within the intent and meaning of the act of parliament, 2 & 3 Will. IV. c. 88; and also that each of such persons so as aforesaid registered and voting, was not entitled to and had not a beneficial interest in lands or tenements of the clear yearly value of not less than 10*l.* over and above all rent and charges, as required by the said act."

Patrick M'Caffrey was registered as a 10*l.* leaseholder at Castle Blayney, on the 19th November 1832, by Mr. Courtney, the deputy assistant barrister appointed under the Irish Reform Act. In his affidavit he swore that he then held " part of the lands of Drumheriff, lying and being at Drumheriff, in the barony of Farney, under a lease bearing date the 1st day of March in the year 1820, by and between the Marquis of Bath and this deponent and others, and that such leasehold is now of the clear yearly value of 10*l.* over and above all rents and charges," &c. in the usual form(*a*). He voted on his certificate as a 10*l.* leaseholder. The lease referred to in the affidavit was dated the 1st of March 1820, and was from the Marquis of Bath to the voter and ten other persons, as joint tenants of the township of Drumheriff,

(*a*) See Schedule C, No. 7, to 2 & 3 Will. IV. c. 88.

consisting of 101 A. 2 R. 11 P. for the term of twenty-one years, commencing on the 1st of the then next May, at the yearly rent of 154*l.* 11*s.* 4*d.* sterling, together with 1*s.* in the pound for receiver's fees for every 1*l.* of the rent payable half-yearly, with a proviso that if the lessees did not alien, assign, transfer, mortgage, demise, underlet, or in any manner dispose of the premises, or any part of them, or their interest therein respectively, either directly or indirectly, to any person or persons, for any part of the term, that they should be liable only to the annual rent of 125*l.* 6*s.* 4*d.* (which was, in fact, the real rent paid for the township). The lease also contained a joint and several covenant from the lessees for the payment of the rent, keeping the premises in repair, and grinding their corn at the marquis's mill, and the common powers to the marquis of distress and entry in case of non-payment of rent.

After this lease was granted, the tenants had divided the lands amongst themselves into separate holdings, as was usual with the tenants of all the town-lands on the Marquis of Bath's estate, and which were so far acknowledged by the Marquis of Bath's agent, that he received the separate rent from each person for his own holding, and in case of non-payment by any one of them, he distrained only upon that tenant's holding; and if it became necessary to remove any one of them, he proceeded by ejectment and recovered judgment against all the tenants in the lease, but executed the writ of possession against the defaulter alone. Patrick M'Caffrey's actual holding after such a division was only about six acres and a half, and for this he paid a rent of 6*l.* 7*s.* 8*d.* a year by half-yearly instalments. The receipt that was given on such payments by the agent, was expressed to be given by him "for 3*l.* 3*s.* 10*d.* *on account* of half a year's rent due for the town-land of Drumheriff," and not for half a year's rent due for the town-land of Drumheriff, which the agent declared he thought might be

used as a discharge by the other tenants of that town-land.

Very contradictory evidence was given as to the yearly value of M'Caffrey's holding and of the town-land of Drumheriff in general. The vote was discussed at great length, both on the ground that as M'Caffrey's land was liable to the whole rent of 125*l.* 6*s.* 4*d.* it could not be worth 10*l.* per annum above all rents and charges; and, 2dly, that even if the rent was apportioned amongst all the tenants, yet still his land was not worth 10*l.* per annum over his proportion of the rent.

The Committee determined M'Caffrey's vote to be bad.

Patrick Casey's case.

Another vote of a tenant of the Drumheriff town-land, under precisely similar circumstances with M'Caffrey, was then taken, when the Committee desired the following question to be discussed:—Whether persons holding as joint tenants under leases similar to the one produced in the case of Patrick M'Caffrey, and sub-dividing the land and the rent amongst themselves in the manner which had been proved in that case, had the right to vote? The question was accordingly discussed in the case of a voter named Patrick Casey, claiming under the same lease of the town-land of Drumheriff.

Joint tenants under a lease for more than twenty years are not entitled to vote for a county in Ireland, unless each individual possesses a qualification under it of more than 10*l.* above the whole rent reserved. *Sed quære.*

Mr. Follett in support of the objections to the voters:

In order more clearly to see the spirit in which the Irish Reform Act was passed, under which alone this class of voters can claim the elective franchise, it may be as well to consider what the laws regulating that franchise were previously to the passing of that act. In England, as is well known, every freeholder, whether he was tenant in fee or in tail, for his own life or that of another, either separately, in joint tenancy or in tenancy in common with others, so that his particular interest was of the yearly value of 40*s.*, had the right of voting in the election of knights of the shire for parliament. In Ire-

land this was not the case. By the 10th Geo. IV. c. 8, the right of voting for counties was restricted to those "whose freeholds were of the clear yearly value of 10*l.* at the least over and above all charges, except only public or parliamentary taxes, county, church or parish cesses or rates, and cesses on any town-land or division of any parish or barony." (*b*) This act was passed to extinguish a class of freeholders seldom capable of judging for themselves in political matters, and exposed alike to the undue influence of their priests on the one side and of their landlords on the other. Another act, the 4 Geo. IV. c. 36, had been previously passed in 1823 for the express purpose of putting a stop to the creation of votes of a similar nature to those now under discussion. This statute (the preamble of which states, that "Whereas the practice of granting leases to persons jointly, in common or in partnership, still prevails in some parts of Ireland, to the material prejudice of the improvement of the people. And whereas the continuance of such practice is much induced by the facility thereby afforded of multiplying qualifications (often colourable only) to vote for members to serve in parliament, contrary to the spirit of the laws and constitution. And whereas it is highly expedient such inducement should cease,") enacts, "that after the passing of it, it should not be lawful for any one to register any freehold under the yearly value of 20*l.* held by virtue of any lease or other instrument given or executed to any person or persons, jointly, in common or in partnership, after the 1st day of July then next, or to vote for a member or members to serve in parliament for any place in Ireland by virtue of such freehold."

(*b*) There were some other restrictions on the right of voting for counties in Ireland. By the Irish statute, 35 Geo. III. c. 29, s. 25, no person was allowed to vote for a freehold arising from a rent-charge, unless it was of the yearly value of 20*l.* or by s. 20, "by virtue of a freehold under the yearly value of 20*l.* unless it was in his actual occupation either by his residing thereon, or tilling or grazing the same, to the amount of 40*s.* yearly value thereof."

This act still remains law, for by the 55th sect. of the Irish Reform Act, "all former laws as to elections are declared to remain in force, save so far as they were thereby repealed or altered." There is no repeal or alteration of the 4 Geo. IV. and no freeholder can therefore vote for a less interest under a joint lease than of 20*l.* per annum. Can it then be supposed that the framers of the Reform Act contemplated giving a franchise to 10*l.* joint yearly leaseholders, which they denied to 10*l.* joint freeholders?" Their intention, no doubt, was to remove the technical distinctions between freeholders and leaseholders, and not to give the latter any superiority over the former. It is true that in the 10 Geo. IV. the word "freehold" alone is used, because that was the only tenure which, at the time that act passed, conferred the right of voting, but when the Reform Act gave that right to other classes without repealing the 4 Geo. IV. the restriction as to value must have been tacitly supposed to have been continued to the newly-created constituency. If, therefore, these two acts are construed fairly together, it is clear that chattel leaseholders under a joint lease, whose interest is not worth 20*l.* a-year, have no right to vote.

Admitting, however, that the Reform Act gave to the dependent leaseholder for years a boon which it withheld from those who hold their lands by a higher tenure, still the class of voters under discussion gained no right to vote under its provisions. They claim as lessees of lands and tenements for the unexpired residue of a term originally created for a period of not less than twenty years, and having a beneficial interest of the clear yearly value of not less than 10*l.* over and above all rents and charges; but how can any of them pretend that his interest in six, or ten, or a dozen acres, is a beneficial interest of 10*l.* a year above the rent of 154*l.* 11*s.* 4*d.*, to which each individual joint tenant is liable at any time. The whole of this rent may be recovered from

him by distress, or by action of debt, or he may be ejected in default of payment of it. It is true that if he was called upon singly to pay it, he might have recourse to and possibly recover it from the other tenants, but it is equally possible that he might not be able to do so, and whether he could do so or not, he is primarily liable to the payment of the whole. The practice of the Marquis of Bath's agent in not requiring any tenant to pay more than a certain proportion of the rent, to which all were alike equally liable, can make no difference as to their legal liabilities. The practice indeed only shows more fully the power which the Marquis and his agent have over them to exact or not the rent as and when they think proper. Could even the voter pretend that he had a sufficient pecuniary interest in his holding to entitle him to vote, how could he truly swear that he was in the occupation of the premises for which he claimed to vote under a lease from the Marquis of Bath? That lease would make him a joint tenant of the whole township for twenty years, but he occupied, in fact, only a few acres of it not under that lease or any other lease for any term of years, but as a mere tenant from year to year to the other joint tenants under some agreement among themselves. He therefore had no leasehold at all for which he could vote.

Nothing can be more contrary to the spirit of the Reform Act, of which the great object was to create an independent constituency, than to give the elective franchise to a body of men who were each liable for a much higher rent than it was possible for them to realize from their separate holding, that they may all at any time be turned out by their landlord for a free and unbiassed exercise of it.

Mr. Harrison and Merewether, Serjt. in support of the votes.

The 4 G. IV. applies only to freehold leases, no other kind of lease is mentioned in it; and a disfranchising

act cannot be extended by implication to affect interests which did not exist at the time that it was passed. The object of that act was to prevent fraudulent creations of freeholders for election purposes, but the leases, under which these voters claimed, were made at a period that no chattel leaseholder could vote, and no one could foresee that such a franchise would be granted to them; they were clearly not therefore under the purview of that statute, and are entitled to share in the benefits conferred upon them by the Reform Act.

The right of joint tenants of freeholds to vote was undisputed before the Reform Act. Heywood's Counties, c. 3, p. 68. That act, which was passed for the express purpose, as is stated in its preamble, of "extending the elective franchise to many of his Majesty's subjects in Ireland who had not theretofore enjoyed the same;" directs, that in addition to the persons then by law qualified to vote at the election of knights of the shire for the several counties in Ireland, (amongst other persons) that every male person of full age, and not subject to any legal incapacity, who shall be entitled as lessee or assignee to any lands or tenements, whether of freehold or of any other tenure whatsoever, for the unexpired residue, whatever it may be, of any term originally created for a period of not less than twenty years, and having a *beneficial* interest therein of the clear yearly value of and not less than 10*l.* over and above all rents and charges, shall be entitled to vote for a knight or knights of the shire for the county in which such lands or tenements shall respectively be situate." There is no limitation of the right thus bestowed to tenants in severalty, and joint tenants must therefore be fully entitled to claim the newly-granted franchise, provided that they possess the requisite beneficial interest of 10*l.* over their rent and the other charges on their land. Should this question be decided

in our favour it will be the duty of the opposite side distinctly to prove, in each individual case which they have objected to, that the beneficial interest of the voter is not worth 10*l.* a year above his rent and charges; for no principle is more firmly established in parliamentary law than that every thing must be assumed in favour of the vote, and every objection most clearly made out against it. *Cirencester case* (*c*), *Wootton Bassett case* (*d*). Now, however, the question is, whether the whole rent divisible in practice and in equity in certain proportions amongst all the tenants, is to be affixed to each particular tenant. It surely cannot be contended that there are as many rents of 154*l.* 11*s.* 4*d.* a year as there are tenants, and yet unless there are, how can the value of every tenant's holding be diminished by that sum? If even in strict law each tenant is to be considered as liable to the whole of that rent, still it must be remembered that it is his *beneficial* interest in his holding which is to be considered; and whatever his legal liabilities may be, his legal and equitable capabilities, in case at any time he should be obliged to pay the whole rent, of recovering their proportions of it from the other joint tenants, must be taken into consideration. The word "beneficial," indeed, ought to be construed in the largest sense, and be held to include not only the equitable interest which any joint tenant might have, but also the particular interests and advantages which the joint tenants under these leases enjoy, by the custom and usages adopted in the management of Lord Bath's estates.

No attempt of a similar nature to the present has been ever made in England to affix the whole of the rent of a lease for lives, or the whole of the interest on a mortgage, upon every individual joint lessee for lives or mortgagor. In Ireland, however, attempts similar

(*c*) 2 Fraser, 448. (*d*) Male's Law of Elections, App. 165.

to the present have been made, and Mr. Robinson, in his work on Registration, p. 44, note 52, tells us the result of them. He says, "a difference of opinion existed amongst the assistant barristers with respect to the admission of joint tenants to register, who held by instruments executed prior to July, 1823. The question has been finally settled upon consultation by the judges, that such joint tenants are entitled to register without swearing to the qualification in value above the whole rent to which they are jointly liable, but merely above such portion of it as each tenant is inter se liable to." A decision to the same effect, which is not, however, reported, has been lately made in 1830 by all the judges in Ireland, with respect to the freehold tenants of Mr. Fitzgerald in Kerry. No difference whatever exists between these cases and the one under discussion except that of tenure, the interests are precisely similar; and it is to be hoped that the Committee will come to the same decision as to joint tenants of leaseholds for years as has been made in two cases by the judges in Ireland as to joint tenants of leaseholds for lives.

Mr. Follett, in reply.

No decision has yet been made by the judges of Ireland with regard to leaseholds for years, an inferior species of tenure, under which the tenants are in greater dependence on their landlords than in leaseholds for lives. Had there been, however, any such decisions, they would not have been binding on the Committee. The question therefore simply remains, whether these tenants are able, by any arrangement amongst themselves, to deprive their landlords of the right of demanding from each of them the whole of his rent. If not, each holder must be liable to it, and cannot, therefore, be entitled to vote, unless his holding is of the beneficial value of more than 10*l.* a year over and above that rent.

The Committee determined "that persons holding under

such a lease as has been before them, as joint tenants, had not a right to vote at the last election (*e*).

Mr. Harrison then called upon the petitioners to prove that the objection as to joint tenantcy was made at the
July 10. registry to these votes. Evidence was then given to show that such an objection was made. The counsel for the sitting member, however, contended it was not sufficient, and applied for time to send for the registering barrister and other witnesses. This the Committee, after a very long discussion, acceded to, but they directed the counsel for the petitioners to proceed with their case; they suspending their decision upon the votes, until it was proved that the objections to them, on the ground of joint tenantcy, were duly taken at the registration. The petitioners then proceeded to strike off 315 votes, which were decided by the Committee to be bad, upon the grounds of their decision, upon the point of joint tenantcy in *Patrick Casey's case*, provided that it should be proved that this objection had been taken before the registering barrister. Mr. Lucas thus standing in a majority upon the poll, the counsel for the sitting member opened his case.

July 15. The registering barrister, Mr. Courtenay, arrived on the 14th, and was examined on the 15th of July. After hearing his evidence, the Committee determined that the objection on the ground of joint tenantcy, was not made before the registering barrister in such a manner as to warrant the Committee inquiring into the votes on that ground.

The whole of the votes thus decided upon, subject to proof of the objection on the ground of joint tenantcy

(*e*) At the rising of the Committee on the 30th of July, the Chairman stated, that great doubts were entertained by many members of the Committee, as to the validity of their determination upon the point of joint tenantcy, and that it was the wish of himself and the other members of the Committee, that it should be considered as an open question, and not as determined by the deliberate opinion of the Committee.

having been made before the registering barrister, were now considered as open, and the counsel for the petitioner proceeded to bring evidence to shew that they were bad, on the ground that the voters had not a beneficial interest of 10*l.* a year above the rent, or part of the joint rent which they actually paid, which objection was proved to have been taken to them before the registering barrister. Much discussion took place as to the mode of ascertaining value, but the Committee laid down no precise rule on the subject; it was understood, however, that they did not adopt the rule laid down by the Longford Committee in 1832. (*f*)

On the 30th of July the counsel for the sitting member abandoned their case, and gave in a list of voters which they acknowledged to be bad, sufficient to make up the petitioner's majority. Mr. Law then wished to proceed to strike off the remaining votes which the petitioner had objected to. This course was, however, opposed by the counsel for the sitting member, and ultimately waived.

The Committee then came to the usual resolutions, that Mr. Lucas was duly elected and ought to have been returned, and that neither the petition nor the opposition to it were frivolous or vexatious.

(*f*) Perry and Knapp, 196.

CASE IV.

BOROUGH OF DROITWICH.

The Committee was appointed on the 17th of March 1835, and consisted of the following Members:

Lord Sandon, M. P. for Liverpool, (*Chairman.*)

David Lewis, Esq. M. P. for Carmarthen.	Kedgwin Hoskins, Esq. M.P. for Herefordshire.
Robt. Williams, Esq. M. P. for Dorchester.	Hon. Hugh Arbuthnot, M.P. for Kincardinshire.
James Bradshaw, Esq. M. P. for Berwick.	Lord John Scott, M. P. for Roxburghshire.
Sir Oswald Moseley, M. P. for North Staffordshire.	Thos. Marsland, Esq. M. P. for Stockport.
John Neild, Esq. M. P. for Cricklade.	Richard Weyland, Esq. M.P. for Oxfordshire.

Petitioner:—John Hodgetts Hodgetts Foley, Esq.
Sitting Member:—John Barnaby, Esq.
Counsel for the Petitioner:—Mr. Harrison, Mr. Joy, and Mr. Austin.
Agents:—Messrs. Sherwood and Thorpe.
Counsel for the Sitting Member:—Mr. Serjeant Merewether, and Mr. R. C. Hildyard.
Agents:—Messrs. Williams, Brooks, Powell, and Broderip.

Petition.

THE petition stated, that at the last election for the Borough of *Droitwich*, John Barnaby, Esq. and the petitioner were candidates—and the return of Mr. Barnaby.

That divers persons

That divers persons voted for Mr. Barnaby who were

incapable of voting at such election on the ground of having, during such election, or within six calendar months previous to such election, or within fourteen days after the completion thereof, been employed as counsel, agent, &c. and received pay &c., and that such votes were admitted and entered on the poll book as good votes for Mr. Barnaby.

voted who were the paid agents of the sitting member.

That many persons who were registered as electors for the said borough by the revising barrister, had become disqualified as electors for the borough at the last election, between the period of the register being revised and signed by the barrister and the time of holding the election, by receiving alms or parochial relief, or by having parted with, sold, or otherwise ceased to be possessed of the property in respect of which they were registered, or by removal of their occupation or residence, or otherwise; and that other persons who voted at the election were induced to vote by bribes given, or promises of bribes made, both before and after the registration, and by other illegal rewards and promises; but all the aforesaid persons were nevertheless allowed to vote for Mr. Barnaby.

That many persons became disqualified between the period of registration and the election.

That persons who had received bribes voted.

That the names of divers persons were improperly retained by the barrister on the register of voters for the borough, the nature of the qualification in respect of which such persons claimed to vote, or the name of the parish in which such persons resided, or in which the property for which they claimed to vote were situate, being struck out of the list or register by the barrister, or altogether omitted from the list when the same was submitted to the barrister for his revision, and the omission not being supplied before the barrister had completed the revision of such list, that the votes of such last-mentioned persons were received at the poll for Mr. Barnaby, notwithstanding an objection taken by or on behalf of the petitioner to the validity of such votes.

That persons improperly retained on the register voted.

That the votes of many other persons were received

That persons impro-

perly inserted in the list and retained on the register voted.

at the poll for Mr. Barnaby whose names were improperly inserted in the list, and also improperly retained in the register of votes for the borough, such persons not being qualified or entitled either as freemen or occupiers of property to be registered or to vote, or being subject to legal incapacity or other disqualification.

That persons whose names were improperly omitted from, or struck out of the register, tendered their votes for the petitioner.

That the names of divers persons were improperly omitted or struck out from the register in consequence of the decision of the barrister, notwithstanding such persons had a lawful right to be put upon such register, and such persons tendered their votes at the election for the petitioner; and which persons would, if their names had been inserted in the register, have had full right to vote at the election, and were in all other respects qualified and entitled to vote at such election.

That names of persons were improperly omitted from the list by the persons directed to make out the same, and also from the register, in consequence of the erroneous decision of the barrister.

That the names of divers persons were improperly and illegally omitted from the list of voters for the borough by the persons respectively authorized and required by law to make out such lists, notwithstanding such several persons so omitted had, at the time of making out such lists, a lawful right to have their names inserted in such list, and to be upon the register of voters for the borough, and were in all respects duly qualified and entitled to be upon the register of voters for the borough and to vote in the election of members for the borough, and such several persons were also improperly and illegally omitted from the register in consequence of the erroneous and improper decision of the barrister.

That votes for the petitioner were improperly rejected at the poll.

That the votes of divers persons who were on the register, and who tendered their votes for the petitioner at the election, were improperly and illegally rejected by the returning officer, or the persons presiding at such election in the place of the returning officer.

That the votes of divers persons having a right to vote at the election, and which were tendered for the petitioner, were improperly and illegally rejected by the

returning officer, or such other persons presiding at the election as aforesaid.

That various irregular, improper, and illegal acts were done by the overseers and others in making out and publishing the list of voters for the borough and the places sharing in the election for the same. Improper acts by overseers and others in making out the list.

That the list of the persons within the parish of Salworp entitled to vote as electors for the borough, was not affixed to the church door of the said parish on the two Sundays next after such list was made, as directed by the act passed in the second year of the reign of his present Majesty, intituled "An Act to amend the Representation of the People in England and Wales." That the list for the parish of Salworp was not affixed to the church door, according to the act.

It likewise contained a charge, that in the parish of Doondale, after the list of electors had been affixed to the church door, a second list, containing several additional names, was affixed close to the original list, and such names were retained in the list of voters by the barrister and inserted in the register; and also charges of bribery and treating, which were not persisted in; and stated that by the illegal means aforesaid Mr. Barnaby had obtained a colourable majority over the petitioner, whereas the petitioner had a majority of legal votes; that Mr. Barnaby by such practices, and other undue, corrupt, and illegal proceedings, was wholly incapacitated from serving in the present parliament for the borough, and that his return was wholly null and void. That the sitting member had obtained a colourable majority only.

And it prayed the House to declare the election and return of Mr. Barnaby null and void, and that the petitioner was duly elected, and ought to have been returned. Prayer.

At the close of the poll the numbers were, for Mr. Barnaby, 125, and for Mr. Foley, 122. The poll.

This case resolved itself into a scrutiny, the charges of bribery and treating being abandoned by Mr. Harrison in his opening.

Thomas Cotterell's case.

The removal from the house in respect of which a 10*l.* householder is registered, after the 31st of July, but before the lists are signed by the barrister, is a disqualification to vote. An objection may be taken before a committee to a vote given under such circumstances, although the allegation in the petition only goes to loss of qualification between the period of signing the register by the barrister and the time of election.

The petitioner first entered upon the case of Thomas Cotterell, who had voted for the sitting member; and proposed striking him off the poll, on the ground that he became disqualified between the period of the registration and the period of the election.

It appeared by the evidence that the revising barrister revised and signed the lists on the 11th of October 1834, and that the voter had quitted the premises in respect of which he was put upon the list at Michaelmas, (meaning by that the 29th of September;) which facts having been elicited,

Mr. R. C. Hildyard, for the sitting member, objected to the petitioner proceeding any further in this case, there being, as he contended, no allegation in the petition to give the Committee jurisdiction: and argued, that as the petition alleged, "that many persons who were registered as electors for the said borough by the revising barrister or barristers, had become disqualified as electors for the said borough at the said last election, between the period of the register or registers being revised and signed by the said barrister or barristers and the time of holding of the said election for the said borough, by receiving alms or parochial relief, or by having parted with, sold, or otherwise ceased to be possessed of the property in respect of which they were registered by, or by removal of their occupation or residence, or otherwise;" the petitioner must be confined to the allegations of his petition, and could give no evidence of the disqualification between the 31st day of July, and the 11th of October, the day when the revising barrister revised and signed the list; and that it was incumbent on the petitioner to show that the qualification ceased *within* the period alleged in the petition.

He further contended that the text writers on this subject agreed that the evidence must be confined to the allegations contained in the petition. That

in Orme on Elections, p. 394, it is laid down to be the rule before Committees, "*not to allow a petitioner to go into evidence of matter not alleged in his petition to the House:* because the opposite party is not presumed to have prepared himself to answer it." In Rogers on the Practice of Election Committees (*a*), the same principle is laid down. In the *Carmarthenshire case* (*b*) it was insisted, as a ground of complaint against the sheriff, that the appointment of sub-sheriff was wholly illegal and unknown to the law; but the Committee decided that it was not competent to go into the illegality of appointing sub-sheriffs, that not being an allegation in the petition. In the *Nairn case* (*c*), a person named Rose was objected to on the ground of undue influence. It was contended that the case must be proved secundum allegata, and that every person sued in a court of justice is to have due notice, by the form of complaint, of the charges to be brought against him; and the Committee allowed the objection to be good. This petition does not cover the whole period from the 31st day of July (the time when the lists are to be made out by the overseers,) to the day of the election; had it done so the vote would have been bad. In the *Petersfield case* (*d*) the petition set forth, "that Sir Abraham Hume, Bart. High Sheriff for the county of Hertford, William Joliffe, Esq., and the petitioner, were candidates." The counsel for the petitioner, in opening, stated that they intended to object to Sir Abraham Hume as ineligible, being High Sheriff for the county of Hertford at the time of the election; but it was objected that this question could not be mooted, because there was no express allegation or complaint on the subject in the petition; the words "High Sheriff for the county of Hertford" appearing merely as an *addition*

(*a*) 2 Rogers, 30.
(*b*) 1 Peckw. 289.
(*c*) 3 Lud. 405.
(*d*) 2 Douglas, 3.

or *descriptio personæ*. And the Committee resolved " that the counsel be not permitted to argue the point of the ineligibility of Sir Abraham Hume as High Sheriff for the county of Hertford, the same ineligibility not being an allegation in the petition."

This objection is substantial and not technical; it is substantial justice to confine a party making a charge against a sitting member, to the allegations contained in the instrument by which that charge is made; and all common law and parliamentary precedents are in support of the rule. So important did Lord Tenterden consider this rule, that in *Wright* v. *Clements* (*e*), he says, " it is of great importance to follow the ancient form of precedents; for if we depart from them in one instance, one deviation will naturally lead to another, and, by degrees, we shall lose that certainty which it is the great object of our system of law to preserve." From time immemorial election petitions have always contained particular allegations, and the parties have always been confined to them. If the Committee relax in this case the certainty required in allegations, subsequent Committees will follow their example; one deviation will be a precedent for another, until at last no sitting member, when he comes before a Committee to defend his seat, will know what charges he has to meet.

The petitioner's counsel will meet this objection by saying, that the list of objections will sufficiently apprise the sitting member of the particular charge brought against him. This is no doubt true; but he has only five days' notice (being the interval which elapses between the exchanging of the lists of objections and the hearing of the petition) to make preparations to meet the charge, which would necessarily give the petitioner a great advantage over the sitting member: and should the sit-

(*e*) 3 Barn. & Ald. 503.

ting member be the representative of a large constituency, or should the borough or county be any considerable distance from London, it would be next to impossible that any solicitor, however active or however intelligent, could ever get up his case. For this reason the House of Commons require the charges to be alleged in the petition, and confine the petitioner to the statement contained in it.

Mr. Harrison for the petitioner.

The cases cited on the other side have no bearing on the point, as petitions for the last eight or ten years have contained no other allegations than that persons who had no right to vote did vote, &c. Even if the propositions contended for on the other side were tenable, the question does not arise in this case, for the 31st of July, the time at which the lists are made out by the overseer, must be taken to be the period of registration, and consequently the case is within the allegation. But the precedents for the last eight or ten years are all against the necessity of introducing particular allegations; and it would ill become the Committee to introduce the technicalities of special pleading in an inquiry like this, where the Committee are adjudicating not as between party and party, but on the merits of the petition. There is in this case a substantial allegation, that the qualification has been lost subsequently to the 31st day of July, and this brings the case within the principle of the *Bedford case* (*f*). There two cases occurred of voters who had lost their qualification after the 31st day of July. In the first of those cases (*Thomas Harper's case* (*g*)) the voter, after having been placed on the register, left the house which he held at the time of his registration, and removed into lodgings a few days before the election, and the Committee determined that the vote was bad. The second of those cases was *Stock's*

(*f*) P. & K. 142. (*g*) P. & K. 142.

case (*h*), in which the Committee came to a similar decision. In the *Southampton case* (*i*) the Committee decided, in *Draper's case*, that a loss of the qualification anterior to the 31st day of July, was not a valid ground of objection before a Committee, unless previously taken before the barrister; but in the note to that case (*k*) the Committee intimated that they had decided both *Draper's case* and a subsequent one upon the facts merely; that they were of opinion that a loss or change of qualification after the 31st day of July destroyed the vote; and that as to loss or change of qualification previous to the 31st of July, the question was undecided and open to argument when it arose. The sitting member has no right to complain of want of sufficient notice, the list of objections fully apprises him of the case to be made out; the language of it being, that he had ceased to occupy between "registration and the election." This then is a substantial allegation of his loss of qualification between the 31st of July and the election.

Mr. Hildyard, in reply.

No Committee, without overturning the law, can hold that they have jurisdiction in this case. *Draper's case* was a very different point from this; all that the Committee decided was, that a loss of qualification anterior to the 31st of July was not to be inquired into, unless an objection had been made to it before the revising barrister, and is totally silent as to what their decision would be had the disqualification occurred subsequently. The note decides nothing, the point never arose before the Committee. The case cited from the *Bedford case, Harper's case*, is very different from this. In that case the voter lost his qualification between the time of signing the list by the revising barrister and the election: *Stock's case* is likewise very different. There the voter left his house after the period of registration. The fifty-fourth

(*h*) P. & K. 143.
(*i*) P. & K. 231.
(*k*) P. & K. 233.

section of the 2 Will. IV. c. 45, enacts, that the lists of voters for each city or borough, so signed as aforesaid by the barrister, shall be forthwith delivered by him to the returning officer for such city or borough; and it then goes on to enact, that he shall have the lists copied in a book, and that "every such book shall be deemed the register of electors to vote in the choice of a member or members to serve in parliament for the county, riding, parts, or divisions of a county, city, or borough;" which clearly shews that the lists do not become the register until signed by the revising barrister. (*l*)

The Committee decided that they had jurisdiction in this case.

Serjt. Merewether was then heard on the evidence, and the Committee expressing themselves satisfied with the proof offered, held the vote bad.

Thomas Wythe's case.

If an outgoing tenant has, according to the custom of the country, a right to occupy a certain portion of the premises, in respect of which he was registered as a voter for a period beyond the time of the election, and that portion is of sufficient value, and his occupation continues up to the time of the election, he has a

The voter was registered in respect of a house and land in Hatsoll: he left his farm at Hatsoll at Michaelmas, but continued in possession of the house, two barns, and nine acres of land, which were part of the farm. It further appeared that it was the custom of the country, that the outgoing tenant was entitled to occupy the house, with the barns and fold-yards, and a certain portion of the land to fodder his cattle on, till the Easter ensuing, if he quitted at Michaelmas. The voter paid no rent to the landlord for the premises he occupied, which were together worth more than 30*l.* a year. The incoming tenant paid rent for the whole farm to the landlord.

Mr. Joy, for the petitioner, contended that this was

(*l*) It was suggested by Mr. Austin (for the petitioner) that as the voter had ceased to be in possession of the qualification for which he was registered, *after the register was signed*, as well as after the 29th September, the allegation objected to was strictly proved; the allegation being, that "He had become disqualified between the period of the register being signed and the election, by *removal of his occupation, or residence, or otherwise;*" which seems to be a sufficient answer.

right to vote, within the meaning of the 27th sect. of 2 W. 4, c. 45.

not an occupation within the meaning of the twenty-seventh section of the Reform Act as owner or tenant, but a mere indulgence of the landlord, and consequently that no right to vote could be founded on it.

Mr. Serjt. Merewether contended, that this holding over was not a mere indulgence but a right. The voter had all along occupied the premises up to the time of the election, and that although he had paid no rent then for them, yet the rent had in substance been paid by him, for, on his entering on the farm, he had been obliged to pay the rent in like manner of the premises held over by his predecessor.

The Committee held the vote to be good.

Edward Harris's case.

If voter contumaciously refuses to answer the third question, and his vote is entered as tendered, the vote will not be put on the poll.

This was the case of a vote tendered at the poll for the petitioner, but which was rejected, under the following circumstances. The voter was registered in respect of a house in Friar-street, in the parish of St. Nicholas. When the voter came up to poll the first day, on the third question being put to him, he answered he knew nothing of Friar-street, and that he did not know whether he had a house in St. Nicholas's parish; and said he came to vote for the Rising Sun, which was in another parish. The voter evidently wished to avoid giving his vote for either party. On his so refusing to give a direct answer to the third question, which was put to him several times, his vote was rejected, and the following entry was made on the poll, " Harris, Edward, St. Andrew's. Objected to, W. Finch. Rejected on account of Harris not answering the third question, by saying he did not know whether he had a house in the parish of St. Nicholas; that he knew nothing of Friar-street. The first time the question was asked, Harris said he came to vote for the Rising Sun." On the second day he was again brought up, when his vote was again rejected, and the following entry was made on the poll. " Harris, Edward, objected to, W. Finch, on the ground

that he was rejected yesterday, which was the case, and therefore vote refused. Voter tendered himself for Mr. Foley."

The case turned on the *intention* of the voter when he went to the poll, whether he intended to vote for Mr. Foley, or whether he wished, by refusing to give a direct answer to the third question, to avoid voting altogether: and of the latter opinion was the Committee, for they refused to put his vote on the poll.

In the course of the inquiry in this case, on the counsel for the petitioner proposing to give evidence of what passed at the poll, at the time the tender was made,

Parol evidence may be admitted to explain, not to contradict the poll.

Mr. Serjt. Merewether objected to the admission of any parol evidence, and contended that the poll book was conclusive evidence of all that passed on that occasion.

Mr. Harrison, for the petitioner, contended that the poll was not a record, and therefore not conclusive, and that therefore he had a right to add to and explain the poll; and cited the *Southampton case* (*m*), where a tender was allowed to be proved, the returning officer having refused to enter it.

Mr. Serjt. Merewether, in reply,

Contended that cases had been decided where evidence was not allowed to be given to explain a rate or poll book, and therefore it was clear no evidence could be given to contradict it. That as to what passed at the poll on the second day no evidence could be admitted, as the rejection on the first day excluded the voter from making any further tender; that all the circumstances appeared in the entry on the first day's poll, and that the admission of parol evidence would be to contradict it.

The Committee decided that they would allow parol evidence to explain and not to contradict the poll.

In a scrutiny each case has a

In this case one of the witnesses for the petitioner having been examined in chief, Mr. Serjeant Mere-

(*m*) P. & K. 226.

separate trial, and cross-examination not allowed to other matter than that immediately before the Committee.

wether proposed calling him at a future time, for the purpose of cross-examining him as to other matter than the immediate subject-matter before the Committee; which being objected to by Mr. Joy,

The Committee decided that each vote was to be considered as a separate case, and each witness the witness of the counsel who calls him.

On the proof of a tender, previous declarations of the person tendering as to whom he intended to give his vote for, not permitted to be given in evidence.

Another point arose in this case. Mr. Serjeant Merewether asked one of the witnesses what conversation he had with the voter relative to his vote, before the election. Mr. Joy, for the petitioner, objected to any declarations of the voter relative to his vote being received in evidence; that his vote was the property of the candidate, and that on the authority of the *Middlesex case* (*n*), the declarations of the voter against the candidate were inadmissible.

Mr. Serjeant Merewether contended that the question being *quo intuitu*, the voter refused to answer the third question (*o*); he was entitled to ask the question. In the *Bedfordshire case* (*p*), the admissions of voters against their votes were uniformly allowed to be given in evidence, and the same course was adopted in the *Weymouth case* (*q*). In the *Petersfield case* (*r*) the declaration of a voter was admitted. Mr. Rogers, in his second volume, p. 220, answers the objection of the petitioners' counsel; he there says, that the interest of the public is paramount to every individual interest, the Committee are not like jurymen, sworn "to try the issue joined *between the parties*," but "to try the matter of the petition referred to them;" and the statute 10 Geo. III. c. 16, goes on to say that "there shall be a select Committee to try and determine the *merits* of the return or election." In the *Southampton case* (*s*), in *Saunders's case*, the declarations of a voter were allowed to be given in evidence, although they might tend to

(*n*) 2 Peckw. 141.
(*o*) 2 W. 4, c. 45, s. 58.
(*p*) 2 Lud. 411.
(*q*) 2 Rogers, 218.
(*r*) 3 Dougl. 11.
(*s*) P. & K. 222.

affect him with penal consequences. Here, the question being the *intuitus* of the voter at the time of voting, it would be impossible to find out what that was without receiving evidence of his declarations, and the Committee could have no other safe guide on which to found their decision. In *Hopgood's case* (*t*), in the *Southampton case*, the declarations of a voter against his vote *after* he had polled were received; and in *Primmer's case* (*u*), before the same Committee, it was made a question whether the declarations of a voter should not be received even after the Committee had been ballotted for: *à fortiori*, therefore, the declarations of the voter in the present cases, which were made before he went to the poll, should be admitted.

Mr. Joy having been heard in reply, the Committee decided, that unless the conversation made part of the *res gestæ* at the poll, the question could not be put.

Mr. Hildyard then asked the witness whether he had any conversation with the voter *immediately* before or after the tender, which was answered in the negative.

Wilmot Gaunt's case.

In this case the voter tendered his vote for the petitioner. His name had been put on the list in respect of a house and land he occupied in the parish of Claines. The assistant overseer who had prepared and put up the list attended, together with the overseer at Worcester, with the lists of the county voters, before the revising barrister there, on the same day that the revising barristers for the borough held their court at Droitwich. It seems that the overseer and his assistant considered it a matter of indifference whether the list was revised by the revising barrister for the county at Worcester or the revising barrister for the borough at Droitwich, and that such erroneous impression was not removed until

If a person has had his name affixed on the list on the church doors, but an unauthenticated copy of the list is produced to the revising barrister, and by him rejected, the Committee will place his name on the

(*t*) P. & K. 223. (*u*) Ib. 223.

poll if his qualification in other respects is proved.

the revising barrister at Worcester had informed them that he had no jurisdiction over the list of voters for the borough of Droitwich. On this the assistant overseer copied the original list, enclosed the copy in a note, and sent it by the overseer (who had not attended himself to the preparing the original list, and who had never seen it on the church door,) to Mr. Clive, one of the revising barristers of Droitwich, who, considering the paper utterly valueless as a list, it not being properly authenticated, refused to allow it.

The counsel for the petitioner, who were attempting to put this vote on the poll, called the assistant overseer of the parish of Claines, on which Serjeant Merewether objected to his evidence being received, as he had not been examined before the revising barrister. The Committee decided that in the first instance they ought to hear the evidence which was brought before the revising barrister, in order to see whether the evidence now objected to could be afterwards admitted.

The overseeer was then called, who proved taking the copy of the list from the assistant overseer to the revising barrister at Droitwich, and his rejection of it. The counsel for the petitioner proposed to examine him to other matter than that on which he was examined by the revising barrister, on which

A witness may be examined to points he was prepared to prove before the barrister, although not examined to them at the time.

Mr. Serjeant Merewether objected to the witness being examined on such matter. In the *Rochester case* (*v*), in the present session, the Committee refused to allow a witness to be examined who was not examined before the revising barrister, and it would be a deviation from that resolution to permit a witness who was before the barrister and examined as to one point only, to give evidence as to other matters which were not then inquired into. The Committee are a court deciding by way of appeal from the decision of the revising barrister, and it would therefore be impro-

(*v*) *Post*, 71.

per to admit any other evidence than that which was brought before the notice of the revising barrister.

A member of the Committee asked whether a court of quarter sessions were tied down in the same way in an appeal against an order of removal, and thought that this case was similar.

Serjeant Merewether.

The cases are not analogous. In an appeal from an order of removal you call what witnesses you like, because the pauper is the only person whose evidence is taken before the magistrate making the order, and it would be unjust in such a case to conclude the appellant parish by the evidence of the very person whose wish it might be to charge himself on that parish; but in this case it was open to the parties to call what witnesses they chose before the barrister, and to examine them as to any facts they might think proper to inquire into; and as this witness has been examined by the barrister, but not as to the facts about to be inquired into by the petitioner's counsel, it is incompetent to the Committee to receive evidence of such facts in appeal.

Mr. Harrison

Contended that it was impossible that the Committee could be considered a court of appeal in such a light as to preclude a party from giving other evidence than that brought before the revising barrister. The court of the revising barrister was not a court of record, and no notes are necessarily kept of its proceedings, and the doctrine of appeal could not be held to apply. This case was like an appeal at the quarter sessions, when it was competent to an appellant to give what evidence he thought fit. Here the voter was kept off the register by no fault of his own, and it would be hard that he should be deprived of his vote from the non-admission of evidence of the mistake through which his name had not been put on the register.

Mr. Serjeant Merewether was heard in reply.

The Committee decided that the witness might be examined to such points as he was prepared and enabled to speak to before the barrister, although he had not been asked about them before the barrister.

Not usual to summon or swear the revising barrister.

George Clive, Esq. the revising barrister, was called to prove what passed between him and the overseer, and some discussion taking place as to whether a summons to attend the Committee ought not to be served upon him,

Mr. Harrison stated that he had never caused any revising barrister to be summoned or sworn, that if he wished his attendance he caused a note to that effect to be sent to him. Mr. Clive was then examined, but was not sworn.

It was afterwards proposed to call the assistant overseer to prove the circumstances under which the voter was not on the register, and that his name had been regularly exhibited in the list on the church-door &c.

Mr. Hildyard objected to his being called, and contended that the Committee had no jurisdiction on this vote but what was given them by the 60th section of the Reform Act. By that section it was enacted, that any petitioner should be at liberty to impeach the correctness of the register, by proving that in consequence of the decision of the barrister who shall have revised the lists of voters from which such register shall have been formed, the name of any person who has voted at such election *was improperly* inserted or retained in such register, or the name of any person who tendered his vote at such election *improperly* omitted from such register. It is therefore evident, that unless the petitioner can shew that in consequence of the decision of the revising barrister the name of the voter was *improperly* omitted from the register, the Committee has no right to put him on the poll. In this case, the evidence proved that the barrister had decided properly; for the

paper brought to him by the overseer not being the original list which was exhibited on the door of the parish church, and being utterly unauthenticated, was, so far as it purported to be, a list of persons entitled to be put on the register, a mere piece of waste paper. The overseer ought to have attended with the original list, and secondary evidence of it, even if this paper could for a moment be considered as such, could not be admitted. This being the case, can the Committee come to the conclusion that the barrister decided wrong? The consequence would be to let any unauthenticated paper pass for a list; one paper might be exhibited at the church-door containing a list of unexceptionable names to which no objections might be taken, and then another list produced to the revising barrister containing the names of all the paupers in the parish, and no objection appearing to them, the register would be crowded with a number of fictitious votes; an artifice the Reform Act, by requiring the exhibition of the lists at the church-door to give the public an opportunity of objecting to improper persons being placed upon the list, expressly guards against. The voter, if aggrieved, has his remedy against the overseer, the Reform Act rendering him liable to an action if he wilfully contravene or disobey the provisions of the act.

The only right the voter has to vote is in respect of his being on the register, his only right to be on the register is in respect of the original list being produced to the revising barrister, who, when an unauthenticated document was brought to him, very properly rejects it. The right to vote is given by the Reform Act, and must be taken with all the conditions annexed to it by that statute; they have not been complied with; the decision of the barrister therefore was right, and consequently the Committee have no jurisdiction, and the voter has no title to be put upon the poll.

Mr. Harrison.

The argument used on the other side is not applicable, the question the Committee have to decide being whether the petitioner is in a condition to be let into further evidence respecting the vote. The principle is indisputable, that if a person does all he can to exercise a right, he cannot be deprived of it. Cases have occurred where persons, who had claimed to be admitted as freemen, and had been refused admittance, on proof that every thing had been done which on their parts could be done, have been treated as if they had been admitted. This doctrine was applied in the *Warford case* (*x*) in the vote of Nathaniel Hall. There the freeman had done all he could to be admitted, and the vote was allowed. In *The King* v. *Osborn* (*y*) the same doctrine prevailed in an election. The neglect of duty on the part of a returning officer has not been held of late years to avoid an election. The same doctrine must apply here. The voter's name appeared on the list which was affixed to the church-door and remained there the proper time, and no objection was made to it, and after the 25th day of August he could have no control whatsoever over the list. Having done all he could towards being placed on the register, it would be gross injustice to let the misconduct of the overseer destroy his vote. We are, therefore, in a condition to be let into further evidence of the circumstances attending this vote. In this case too the list was improperly rejected by the revising barrister. The Southampton Committee in *Dawson's case* (*z*) put a person on the poll whose name was in a list affixed by the overseers on the church-doors, but not in a list given by them to the barrister, the register, and Mr. Serjeant Merewether, in arguing against the admission of that person's name on the poll, contended that inasmuch as his name was

(*x*) Hudson on Irish Elections, Appendix, p. 430.

(*y*) 1 Comyns, 240 and 243.

(*z*) P. & K. 226.

not omitted from the register in consequence of the decision of the barrister, his name could not be put on the poll, thereby admitting that if, as in this case, the list had been rejected by the barrister, the Committee would have had jurisdiction. But if this case is not within the 59th and 60th sections of the Reform Act, then it is a case not provided for by the statute, and therefore, as contended for by Mr. Austin in the *Southampton case*, the Committee should exercise as that Committee actually did exercise the undoubted jurisdiction they had before the Reform Act, to place persons whose votes were improperly rejected on the poll.

Mr. Hildyard in reply.

The right of this person to vote is conferred by the act of parliament, and must therefore be taken with all its conditions; and one of these conditions is, that if his name be omitted from the register by any other means than that of the improper decision of the revising barrister, the voter has no right to vote, the Committee have no jurisdiction to put him on the poll. If the Committee derive their jurisdiction in this case from the 60th section of the Reform Act, then it necessarily follows that they have not the power of putting persons on the poll that they had before the passing of the act. To say that this is a hard case is no argument; if it is a hard case the legislature should take it into its own hands and pass an act to amend the Reform Act in this particular. But the act, by giving a right of action against the overseer, has expressly provided compensation in a case of this sort. It is impossible to say that the barrister decided wrong, and therefore the vote ought not to be placed on the poll.

The Committee decided that they ought to admit the evidence of the assistant overseer.

The assistant overseer was then called, who proved that the name of the voter had been on the original list, and that the list had been exhibited, as required by the act, at the church-door, and that no objection was made

to the vote. He then proved the circumstances under which the mistake had arisen in taking the original list to Worcester and sending the copy to Droitwich.

Mr. Harrison then called evidence to shew that the voter had originally a right to be upon the list, which failed, as it was proved that he had not paid his assessed taxes in respect of the house, and the Committee decided that the vote could not be allowed on account of the voter not having paid his taxes.

Thomas Lawrence's case.

Declarations of a voter, being an agent, received when the validity of his vote is in question.

In this case the voter was objected to by the petitioner, on the ground that he was a paid agent of the sitting member, either during the election or within six months previously thereto, or fourteen days after the completion thereof, within the meaning of the statute (*a*).

It appeared by the evidence that the voter had been retained on the part of the sitting member, and it was proposed to give evidence of a conversation which the voter had with a witness who met him at an inn in the town, about a week before the election, when the conversation turned on their agency, and in which he admitted having received a retainer from the sitting member.

Mr. Hildyard objected to any declarations of the voter being received, except such as he had made at the poll, and cited the resolution of the Committee in *Harris's case.*

Mr. Joy contended that the declaration formed part of the *res gestæ,* that in the Courts of Law declarations accompanying an act are always admitted; that the declaration of the voter here was not to support the vote but to destroy it, and that a declaration to that effect might be admitted. *Rex* v. *The Inhabitants of Harwich* (*b*), *Bedfordshire case* (*c*), and the *Weymouth case.* The same doctrine is laid down in

(*a*) 7 & 8 Geo. 4, c. 37.
(*b*) 11 East, 587.
(*c*) 2 Luders, 411.

Rogers (*d*). The resolution in *Harris's case* is perfectly consistent with what we now propose to do. Here the witness goes into an inn and meets the voter, and the conversation commences on the subject of their retainers; what the voter said would therefore be a declaration accompanying an act, and would be part of the transaction, and proof of any transaction would be admissible to prove the agency. In the *Hertford case* (*e*) the declarations of agents before the revising barrister were received in proof of subsequent agency.

Mr. Hildyard.

The argument on the other side is a *petitio principii*. If the retainer can be proved by the declaration of the agent, then it followed that payment could be proved by his declaration likewise, which clearly could not be done. All the cases cited on the other side were cited in arguing *Harris's case*, and the Committee should therefore adhere to their former decision.

The Committee were of opinion that the evidence might be received.

The vote was ultimately declared bad.

Lord Viscount Southwell's case.

An Irish peer who has not brought himself within the exception in the standing order of the House, is not entitled to vote, although he has been placed on the register.

In this case the counsel for the sitting member proposed to strike Lord Southwell's vote from the poll of the petitioner, (the petitioner having established an equality of votes with the sitting member,) on the ground of his being an Irish peer.

Mr. Serjt. Merewether, in opening this case, read the resolution of the House of Commons, "that no peer of this realm, except such peer of that part of the United Kingdom called Ireland, as shall for the time being be actually elected, and shall not have declined to serve for any county, city, or borough of Great Britain, hath any right to give his vote in the election of any member to serve in parliament."

(*d*) 2 Rogers, 218. (*e*) P. & K. 541.

Mr. Harrison objected to the other side going into this vote; the incapacity existed previously to the 31st of July, and no objection was taken to it, and it has accordingly been placed upon the register, and the vote must therefore be taken to be good. The fiftieth section of the Reform Act, after directing the overseers to attend with the lists before the barrister, enacts, that he shall return in the list of voters the names of all persons to whom no objection shall have been made, and then the proviso at the end of the clause goes on to say, that no person's name shall be expunged from the list, unless such notice as is required by the act shall have been given. The Committee then have no power to go into a disability which existed prior to the registration. This case stands on exactly the same footing as that of a disability incurred by the receipt of parochial relief; and it has been decided in the *Rochester case* (*f*), that the receipt of relief previously to the 31st of July cannot be proved, but that the receipt of it subsequently to that day could.

Mr. Serjt. Merewether.

In the *Rochester case* the Committee decided, in the case of a custom-house officer, that where a disability which existed prior to 31st of July, continued unremoved after that day, they would strike off the vote (*g*). The *Rochester case* laid down the law correctly. Courts of law hold the same doctrine in the case of corporate officers, and if there be a continuing disability, you may proceed against a corporate officer by *quo warranto*, although he has held his office for more than six years (*h*). Mr. Harrison has overlooked the very material distinction between the right to be registered and the right to vote. Lord Southwell was entitled, under the twenty-seventh section of the Reform Act, to be placed upon the register. The barrister had no power to strike his

(*f*) See *post, Collins's case*, p. 120.
(*g*) See *post, Wilkinson's case*, p. 96.
(*h*) *Rex* v. *Lawrence*, 2 Chit. Rep. 371.

name from the list of 10*l.* householders, because the incapacity for which we now attach his vote might have been removed before the period of the poll, for he might have been elected, and not declined to serve, for some county, city, or borough of Great Britain. The distinction is observed throughout the act, but it is more particularly observable in the provisions of the thirty-third section, which provides, "that no person shall be entitled to vote in the election of a member, &c. for any city or borough, save and except in respect of some right conferred by this act, or as a burgess or freeman, or as a freeman and liveryman, or in the case of a city or town being a county of itself, as a freeholder or burgage tenant, as hereinbefore mentioned. Provided always, that every person now having a right to vote in the election for any city or borough in virtue of any other qualification than as a burgess or freeman, or as a freeman and liveryman, or in the case of a city or town being a county of itself, as a freeholder or burgage tenant, as hereinbefore mentioned, shall retain such right of voting so long as he shall be qualified as an elector, according to the usages and customs of such city or borough, or any law now in force, and such person shall be entitled to vote in the election of a member, &c. for such city or borough, if duly registered according to the provisions hereinafter contained; but that no such person shall be so registered in any year unless he shall, on the last day of July in such year, be qualified as such elector in such manner as would entitle him then to vote, if such day were the day of election, and this act had not been passed, nor unless such person, where his qualification shall be in any city or borough, shall have resided" within the distance there mentioned. The proviso at the end of this clause enacts, that every such person shall for ever cease to enjoy such right of voting if his name shall have been omitted from the register for two successive years, unless, in conse-

Thomas Cotterell's case.

The removal from the house in respect of which a 10*l.* householder is registered, after the 31st of July, but before the lists are signed by the barrister, is a disqualification to vote.

An objection may be taken before a committee to a vote given under such circumstances, although the allegation in the petition only goes to loss of qualification between the period of signing the register by the barrister and the time of election.

The petitioner first entered upon the case of Thomas Cotterell, who had voted for the sitting member; and proposed striking him off the poll, on the ground that he became disqualified between the period of the registration and the period of the election.

It appeared by the evidence that the revising barrister revised and signed the lists on the 11th of October 1834, and that the voter had quitted the premises in respect of which he was put upon the list at Michaelmas, (meaning by that the 29th of September;) which facts having been elicited,

Mr. R. C. Hildyard, for the sitting member, objected to the petitioner proceeding any further in this case, there being, as he contended, no allegation in the petition to give the Committee jurisdiction: and argued, that as the petition alleged, "that many persons who were registered as electors for the said borough by the revising barrister or barristers, had become disqualified as electors for the said borough at the said last election, between the period of the register or registers being revised and signed by the said barrister or barristers and the time of holding of the said election for the said borough, by receiving alms or parochial relief, or by having parted with, sold, or otherwise ceased to be possessed of the property in respect of which they were registered by, or by removal of their occupation or residence, or otherwise;" the petitioner must be confined to the allegations of his petition, and could give no evidence of the disqualification between the 31st day of July, and the 11th of October, the day when the revising barrister revised and signed the list; and that it was incumbent on the petitioner to show that the qualification ceased *within* the period alleged in the petition.

He further contended that the text writers on this subject agreed that the evidence must be confined to the allegations contained in the petition. That

in Orme on Elections, p. 394, it is laid down to be the rule before Committees, "*not to allow a petitioner to go into evidence of matter not alleged in his petition to the House:* because the opposite party is not presumed to have prepared himself to answer it." In Rogers on the Practice of Election Committees (*a*), the same principle is laid down. In the *Carmarthenshire case* (*b*) it was insisted, as a ground of complaint against the sheriff, that the appointment of sub-sheriff was wholly illegal and unknown to the law; but the Committee decided that it was not competent to go into the illegality of appointing sub-sheriffs, that not being an allegation in the petition. In the *Nairn case* (*c*), a person named Rose was objected to on the ground of undue influence. It was contended that the case must be proved secundum allegata, and that every person sued in a court of justice is to have due notice, by the form of complaint, of the charges to be brought against him; and the Committee allowed the objection to be good. This petition does not cover the whole period from the 31st day of July (the time when the lists are to be made out by the overseers,) to the day of the election; had it done so the vote would have been bad. In the *Petersfield case* (*d*) the petition set forth, "that Sir Abraham Hume, Bart. High Sheriff for the county of Hertford, William Joliffe, Esq., and the petitioner, were candidates." The counsel for the petitioner, in opening, stated that they intended to object to Sir Abraham Hume as ineligible, being High Sheriff for the county of Hertford at the time of the election; but it was objected that this question could not be mooted, because there was no express allegation or complaint on the subject in the petition; the words "High Sheriff for the county of Hertford" appearing merely as an *addition*

(*a*) 2 Rogers, 30.
(*b*) 1 Peckw. 289.
(*c*) 3 Lud. 405.
(*d*) 2 Douglas, 3.

or *descriptio personæ*. And the Committee resolved "that the counsel be not permitted to argue the point of the ineligibility of Sir Abraham Hume as High Sheriff for the county of Hertford, the same ineligibility not being an allegation in the petition."

This objection is substantial and not technical; it is substantial justice to confine a party making a charge against a sitting member, to the allegations contained in the instrument by which that charge is made; and all common law and parliamentary precedents are in support of the rule. So important did Lord Tenterden consider this rule, that in *Wright* v. *Clements* (*e*), he says, "it is of great importance to follow the ancient form of precedents; for if we depart from them in one instance, one deviation will naturally lead to another, and, by degrees, we shall lose that certainty which it is the great object of our system of law to preserve." From time immemorial election petitions have always contained particular allegations, and the parties have always been confined to them. If the Committee relax in this case the certainty required in allegations, subsequent Committees will follow their example; one deviation will be a precedent for another, until at last no sitting member, when he comes before a Committee to defend his seat, will know what charges he has to meet.

The petitioner's counsel will meet this objection by saying, that the list of objections will sufficiently apprise the sitting member of the particular charge brought against him. This is no doubt true; but he has only five days' notice (being the interval which elapses between the exchanging of the lists of objections and the hearing of the petition) to make preparations to meet the charge, which would necessarily give the petitioner a great advantage over the sitting member: and should the sit-

(*e*) 3 Barn. & Ald. 503.

ting member be the representative of a large constituency, or should the borough or county be any considerable distance from London, it would be next to impossible that any solicitor, however active or however intelligent, could ever get up his case. For this reason the House of Commons require the charges to be alleged in the petition, and confine the petitioner to the statement contained in it.

Mr. Harrison for the petitioner.

The cases cited on the other side have no bearing on the point, as petitions for the last eight or ten years have contained no other allegations than that persons who had no right to vote did vote, &c. Even if the propositions contended for on the other side were tenable, the question does not arise in this case, for the 31st of July, the time at which the lists are made out by the overseer, must be taken to be the period of registration, and consequently the case is within the allegation. But the precedents for the last eight or ten years are all against the necessity of introducing particular allegations; and it would ill become the Committee to introduce the technicalities of special pleading in an inquiry like this, where the Committee are adjudicating not as between party and party, but on the merits of the petition. There is in this case a substantial allegation, that the qualification has been lost subsequently to the 31st day of July, and this brings the case within the principle of the *Bedford case* (*f*). There two cases occurred of voters who had lost their qualification after the 31st day of July. In the first of those cases (*Thomas Harper's case* (*g*)) the voter, after having been placed on the register, left the house which he held at the time of his registration, and removed into lodgings a few days before the election, and the Committee determined that the vote was bad. The second of those cases was *Stock's*

(*f*) P. & K. 142. (*g*) P. & K. 142.

case(*h*), in which the Committee came to a similar decision. In the *Southampton case* (*i*) the Committee decided, in *Draper's case*, that a loss of the qualification anterior to the 31st day of July, was not a valid ground of objection before a Committee, unless previously taken before the barrister; but in the note to that case (*k*) the Committee intimated that they had decided both *Draper's case* and a subsequent one upon the facts merely; that they were of opinion that a loss or change of qualification after the 31st day of July destroyed the vote; and that as to loss or change of qualification previous to the 31st of July, the question was undecided and open to argument when it arose. The sitting member has no right to complain of want of sufficient notice, the list of objections fully apprises him of the case to be made out; the language of it being, that he had ceased to occupy between "registration and the election." This then is a substantial allegation of his loss of qualification between the 31st of July and the election.

Mr. Hildyard, in reply.

No Committee, without overturning the law, can hold that they have jurisdiction in this case. *Draper's case* was a very different point from this; all that the Committee decided was, that a loss of qualification anterior to the 31st of July was not to be inquired into, unless an objection had been made to it before the revising barrister, and is totally silent as to what their decision would be had the disqualification occurred subsequently. The note decides nothing, the point never arose before the Committee. The case cited from the *Bedford case, Harper's case*, is very different from this. In that case the voter lost his qualification between the time of signing the list by the revising barrister and the election: *Stock's case* is likewise very different. There the voter left his house after the period of registration. The fifty-fourth

(*h*) P. & K. 143.
(*i*) P. & K. 231.
(*k*) P. & K. 233.

section of the 2 Will. IV. c. 45, enacts, that the lists of voters for each city or borough, so signed as aforesaid by the barrister, shall be forthwith delivered by him to the returning officer for such city or borough; and it then goes on to enact, that he shall have the lists copied in a book, and that "every such book shall be deemed the register of electors to vote in the choice of a member or members to serve in parliament for the county, riding, parts, or divisions of a county, city, or borough;" which clearly shews that the lists do not become the register until signed by the revising barrister. (*l*)

The Committee decided that they had jurisdiction in this case.

Serjt. Merewether was then heard on the evidence, and the Committee expressing themselves satisfied with the proof offered, held the vote bad.

Thomas Wythe's case.

If an outgoing tenant has, according to the custom of the country, a right to occupy a certain portion of the premises, in respect of which he was registered as a voter for a period beyond the time of the election, and that portion is of sufficient value, and his occupation continues up to the time of the election, he has a

The voter was registered in respect of a house and land in Hatsoll: he left his farm at Hatsoll at Michaelmas, but continued in possession of the house, two barns, and nine acres of land, which were part of the farm. It further appeared that it was the custom of the country, that the outgoing tenant was entitled to occupy the house, with the barns and fold-yards, and a certain portion of the land to fodder his cattle on, till the Easter ensuing, if he quitted at Michaelmas. The voter paid no rent to the landlord for the premises he occupied, which were together worth more than 30*l*. a year. The incoming tenant paid rent for the whole farm to the landlord.

Mr. Joy, for the petitioner, contended that this was

(*l*) It was suggested by Mr. Austin (for the petitioner) that as the voter had ceased to be in possession of the qualification for which he was registered, *after the register was signed*, as well as after the 29th September, the allegation objected to was strictly proved; the allegation being, that "He had become disqualified between the period of the register being signed and the election, by *removal of his occupation, or residence, or otherwise;*" which seems to be a sufficient answer.

right to vote, within the meaning of the 27th sect. of 2 W. 4, c. 45.

not an occupation within the meaning of the twenty-seventh section of the Reform Act as owner or tenant, but a mere indulgence of the landlord, and consequently that no right to vote could be founded on it.

Mr. Serjt. Merewether contended, that this holding over was not a mere indulgence but a right. The voter had all along occupied the premises up to the time of the election, and that although he had paid no rent then for them, yet the rent had in substance been paid by him, for, on his entering on the farm, he had been obliged to pay the rent in like manner of the premises held over by his predecessor.

The Committee held the vote to be good.

Edward Harris's case.

If voter contumaciously refuses to answer the third question, and his vote is entered as tendered, the vote will not be put on the poll.

This was the case of a vote tendered at the poll for the petitioner, but which was rejected, under the following circumstances. The voter was registered in respect of a house in Friar-street, in the parish of St. Nicholas. When the voter came up to poll the first day, on the third question being put to him, he answered he knew nothing of Friar-street, and that he did not know whether he had a house in St. Nicholas's parish; and said he came to vote for the Rising Sun, which was in another parish. The voter evidently wished to avoid giving his vote for either party. On his so refusing to give a direct answer to the third question, which was put to him several times, his vote was rejected, and the following entry was made on the poll, " Harris, Edward, St. Andrew's. Objected to, W. Finch. Rejected on account of Harris not answering the third question, by saying he did not know whether he had a house in the parish of St. Nicholas; that he knew nothing of Friar-street. The first time the question was asked, Harris said he came to vote for the Rising Sun." On the second day he was again brought up, when his vote was again rejected, and the following entry was made on the poll. " Harris, Edward, objected to, W. Finch, on the ground

that he was rejected yesterday, which was the case, and therefore vote refused. Voter tendered himself for Mr. Foley."

The case turned on the *intention* of the voter when he went to the poll, whether he intended to vote for Mr. Foley, or whether he wished, by refusing to give a direct answer to the third question, to avoid voting altogether: and of the latter opinion was the Committee, for they refused to put his vote on the poll.

In the course of the inquiry in this case, on the counsel for the petitioner proposing to give evidence of what passed at the poll, at the time the tender was made,

Parol evidence may be admitted to explain, not to contradict the poll.

Mr. Serjt. Merewether objected to the admission of any parol evidence, and contended that the poll book was conclusive evidence of all that passed on that occasion.

Mr. Harrison, for the petitioner, contended that the poll was not a record, and therefore not conclusive, and that therefore he had a right to add to and explain the poll; and cited the *Southampton case* (*m*), where a tender was allowed to be proved, the returning officer having refused to enter it.

Mr. Serjt. Merewether, in reply,

Contended that cases had been decided where evidence was not allowed to be given to explain a rate or poll book, and therefore it was clear no evidence could be given to contradict it. That as to what passed at the poll on the second day no evidence could be admitted, as the rejection on the first day excluded the voter from making any further tender; that all the circumstances appeared in the entry on the first day's poll, and that the admission of parol evidence would be to contradict it.

The Committee decided that they would allow parol evidence to explain and not to contradict the poll.

In a scrutiny each case has a

In this case one of the witnesses for the petitioner having been examined in chief, Mr. Serjeant Mere-

(*m*) P. & K. 226.

separate trial, and cross-examination not allowed to other matter than that immediately before the Committee.

wether proposed calling him at a future time, for the purpose of cross-examining him as to other matter than the immediate subject-matter before the Committee; which being objected to by Mr. Joy,

The Committee decided that each vote was to be considered as a separate case, and each witness the witness of the counsel who calls him.

On the proof of a tender, previous declarations of the person tendering as to whom he intended to give his vote for, not permitted to be given in evidence.

Another point arose in this case. Mr. Serjeant Merewether asked one of the witnesses what conversation he had with the voter relative to his vote, before the election. Mr. Joy, for the petitioner, objected to any declarations of the voter relative to his vote being received in evidence; that his vote was the property of the candidate, and that on the authority of the *Middlesex case* (*n*), the declarations of the voter against the candidate were inadmissible.

Mr. Serjeant Merewether contended that the question being *quo intuitu*, the voter refused to answer the third question (*o*); he was entitled to ask the question. In the *Bedfordshire case* (*p*), the admissions of voters against their votes were uniformly allowed to be given in evidence, and the same course was adopted in the *Weymouth case* (*q*). In the *Petersfield case* (*r*) the declaration of a voter was admitted. Mr. Rogers, in his second volume, p. 220, answers the objection of the petitioners' counsel; he there says, that the interest of the public is paramount to every individual interest, the Committee are not like jurymen, sworn "to try the issue joined *between the parties*," but "to try the matter of the petition referred to them;" and the statute 10 Geo. III. c. 16, goes on to say that "there shall be a select Committee to try and determine the *merits* of the return or election." In the *Southampton case* (*s*), in *Saunders's case*, the declarations of a voter were allowed to be given in evidence, although they might tend to

(*n*) 2 Peckw. 141.
(*o*) 2 W. 4, c. 45, s. 58.
(*p*) 2 Lud. 411.
(*q*) 2 Rogers, 218.
(*r*) 3 Dougl. 11.
(*s*) P. & K. 222.

affect him with penal consequences. Here, the question being the *intuitus* of the voter at the time of voting, it would be impossible to find out what that was without receiving evidence of his declarations, and the Committee could have no other safe guide on which to found their decision. In *Hopgood's case* (*t*), in the *Southampton case*, the declarations of a voter against his vote *after* he had polled were received; and in *Primmer's case* (*u*), before the same Committee, it was made a question whether the declarations of a voter should not be received even after the Committee had been ballotted for: *à fortiori*, therefore, the declarations of the voter in the present cases, which were made before he went to the poll, should be admitted.

Mr. Joy having been heard in reply, the Committee decided, that unless the conversation made part of the *res gestæ* at the poll, the question could not be put.

Mr. Hildyard then asked the witness whether he had any conversation with the voter *immediately* before or after the tender, which was answered in the negative.

Wilmot Gaunt's case.

In this case the voter tendered his vote for the petitioner. His name had been put on the list in respect of a house and land he occupied in the parish of Claines. The assistant overseer who had prepared and put up the list attended, together with the overseer at Worcester, with the lists of the county voters, before the revising barrister there, on the same day that the revising barristers for the borough held their court at Droitwich. It seems that the overseer and his assistant considered it a matter of indifference whether the list was revised by the revising barrister for the county at Worcester or the revising barrister for the borough at Droitwich, and that such erroneous impression was not removed until

If a person has had his name affixed on the list on the church doors, but an unauthenticated copy of the list is produced to the revising barrister, and by him rejected, the Committee will place his name on the

(*t*) P. & K. 223. (*u*) Ib. 223.

poll if his qualification in other respects is proved.

the revising barrister at Worcester had informed them that he had no jurisdiction over the list of voters for the borough of Droitwich. On this the assistant overseer copied the original list, enclosed the copy in a note, and sent it by the overseer (who had not attended himself to the preparing the original list, and who had never seen it on the church door,) to Mr. Clive, one of the revising barristers of Droitwich, who, considering the paper utterly valueless as a list, it not being properly authenticated, refused to allow it.

The counsel for the petitioner, who were attempting to put this vote on the poll, called the assistant overseer of the parish of Claines, on which Serjeant Merewether objected to his evidence being received, as he had not been examined before the revising barrister. The Committee decided that in the first instance they ought to hear the evidence which was brought before the revising barrister, in order to see whether the evidence now objected to could be afterwards admitted.

The overseeer was then called, who proved taking the copy of the list from the assistant overseer to the revising barrister at Droitwich, and his rejection of it. The counsel for the petitioner proposed to examine him to other matter than that on which he was examined by the revising barrister, on which

A witness may be examined to points he was prepared to prove before the barrister, although not examined to them at the time.

Mr. Serjeant Merewether objected to the witness being examined on such matter. In the *Rochester case* (*v*), in the present session, the Committee refused to allow a witness to be examined who was not examined before the revising barrister, and it would be a deviation from that resolution to permit a witness who was before the barrister and examined as to one point only, to give evidence as to other matters which were not then inquired into. The Committee are a court deciding by way of appeal from the decision of the revising barrister, and it would therefore be impro-

(*v*) *Post*, 71.

per to admit any other evidence than that which was brought before the notice of the revising barrister.

A member of the Committee asked whether a court of quarter sessions were tied down in the same way in an appeal against an order of removal, and thought that this case was similar.

Serjeant Merewether.

The cases are not analogous. In an appeal from an order of removal you call what witnesses you like, because the pauper is the only person whose evidence is taken before the magistrate making the order, and it would be unjust in such a case to conclude the appellant parish by the evidence of the very person whose wish it might be to charge himself on that parish; but in this case it was open to the parties to call what witnesses they chose before the barrister, and to examine them as to any facts they might think proper to inquire into; and as this witness has been examined by the barrister, but not as to the facts about to be inquired into by the petitioner's counsel, it is incompetent to the Committee to receive evidence of such facts in appeal.

Mr. Harrison

Contended that it was impossible that the Committee could be considered a court of appeal in such a light as to preclude a party from giving other evidence than that brought before the revising barrister. The court of the revising barrister was not a court of record, and no notes are necessarily kept of its proceedings, and the doctrine of appeal could not be held to apply. This case was like an appeal at the quarter sessions, when it was competent to an appellant to give what evidence he thought fit. Here the voter was kept off the register by no fault of his own, and it would be hard that he should be deprived of his vote from the non-admission of evidence of the mistake through which his name had not been put on the register.

Mr. Serjeant Merewether was heard in reply.

The Committee decided that the witness might be examined to such points as he was prepared and enabled to speak to before the barrister, although he had not been asked about them before the barrister.

Not usual to summon or swear the revising barrister.

George Clive, Esq. the revising barrister, was called to prove what passed between him and the overseer, and some discussion taking place as to whether a summons to attend the Committee ought not to be served upon him,

Mr. Harrison stated that he had never caused any revising barrister to be summoned or sworn, that if he wished his attendance he caused a note to that effect to be sent to him. Mr. Clive was then examined, but was not sworn.

It was afterwards proposed to call the assistant overseer to prove the circumstances under which the voter was not on the register, and that his name had been regularly exhibited in the list on the church-door &c.

Mr. Hildyard objected to his being called, and contended that the Committee had no jurisdiction on this vote but what was given them by the 60th section of the Reform Act. By that section it was enacted, that any petitioner should be at liberty to impeach the correctness of the register, by proving that in consequence of the decision of the barrister who shall have revised the lists of voters from which such register shall have been formed, the name of any person who has voted at such election *was improperly* inserted or retained in such register, or the name of any person who tendered his vote at such election *improperly* omitted from such register. It is therefore evident, that unless the petitioner can shew that in consequence of the decision of the revising barrister the name of the voter was *improperly* omitted from the register, the Committee has no right to put him on the poll. In this case, the evidence proved that the barrister had decided properly; for the

paper brought to him by the overseer not being the original list which was exhibited on the door of the parish church, and being utterly unauthenticated, was, so far as it purported to be, a list of persons entitled to be put on the register, a mere piece of waste paper. The overseer ought to have attended with the original list, and secondary evidence of it, even if this paper could for a moment be considered as such, could not be admitted. This being the case, can the Committee come to the conclusion that the barrister decided wrong? The consequence would be to let any unauthenticated paper pass for a list; one paper might be exhibited at the church-door containing a list of unexceptionable names to which no objections might be taken, and then another list produced to the revising barrister containing the names of all the paupers in the parish, and no objection appearing to them, the register would be crowded with a number of fictitious votes; an artifice the Reform Act, by requiring the exhibition of the lists at the church-door to give the public an opportunity of objecting to improper persons being placed upon the list, expressly guards against. The voter, if aggrieved, has his remedy against the overseer, the Reform Act rendering him liable to an action if he wilfully contravene or disobey the provisions of the act.

The only right the voter has to vote is in respect of his being on the register, his only right to be on the register is in respect of the original list being produced to the revising barrister, who, when an unauthenticated document was brought to him, very properly rejects it. The right to vote is given by the Reform Act, and must be taken with all the conditions annexed to it by that statute; they have not been complied with; the decision of the barrister therefore was right, and consequently the Committee have no jurisdiction, and the voter has no title to be put upon the poll.

Mr. Harrison.

The argument used on the other side is not applicable, the question the Committee have to decide being whether the petitioner is in a condition to be let into further evidence respecting the vote. The principle is indisputable, that if a person does all he can to exercise a right, he cannot be deprived of it. Cases have occurred where persons, who had claimed to be admitted as freemen, and had been refused admittance, on proof that every thing had been done which on their parts could be done, have been treated as if they had been admitted. This doctrine was applied in the *Wexford case* (*x*) in the vote of Nathaniel Hall. There the freeman had done all he could to be admitted, and the vote was allowed. In *The King* v. *Osborn* (*y*) the same doctrine prevailed in an election. The neglect of duty on the part of a returning officer has not been held of late years to avoid an election. The same doctrine must apply here. The voter's name appeared on the list which was affixed to the church-door and remained there the proper time, and no objection was made to it, and after the 25th day of August he could have no control whatsoever over the list. Having done all he could towards being placed on the register, it would be gross injustice to let the misconduct of the overseer destroy his vote. We are, therefore, in a condition to be let into further evidence of the circumstances attending this vote. In this case too the list was improperly rejected by the revising barrister. The Southampton Committee in *Dawson's case* (*z*) put a person on the poll whose name was in a list affixed by the overseers on the church-doors, but not in a list given by them to the barrister, the register, and Mr. Serjeant Merewether, in arguing against the admission of that person's name on the poll, contended that inasmuch as his name was

(*x*) Hudson on Irish Elections, Appendix, p. 430.

(*y*) 1 Comyns, 240 and 243.

(*z*) P. & K. 226.

not omitted from the register in consequence of the decision of the barrister, his name could not be put on the poll, thereby admitting that if, as in this case, the list had been rejected by the barrister, the Committee would have had jurisdiction. But if this case is not within the 59th and 60th sections of the Reform Act, then it is a case not provided for by the statute, and therefore, as contended for by Mr. Austin in the *Southampton case*, the Committee should exercise as that Committee actually did exercise the undoubted jurisdiction they had before the Reform Act, to place persons whose votes were improperly rejected on the poll.

Mr. Hildyard in reply.

The right of this person to vote is conferred by the act of parliament, and must therefore be taken with all its conditions; and one of these conditions is, that if his name be omitted from the register by any other means than that of the improper decision of the revising barrister, the voter has no right to vote, the Committee have no jurisdiction to put him on the poll. If the Committee derive their jurisdiction in this case from the 60th section of the Reform Act, then it necessarily follows that they have not the power of putting persons on the poll that they had before the passing of the act. To say that this is a hard case is no argument; if it is a hard case the legislature should take it into its own hands and pass an act to amend the Reform Act in this particular. But the act, by giving a right of action against the overseer, has expressly provided compensation in a case of this sort. It is impossible to say that the barrister decided wrong, and therefore the vote ought not to be placed on the poll.

The Committee decided that they ought to admit the evidence of the assistant overseer.

The assistant overseer was then called, who proved that the name of the voter had been on the original list, and that the list had been exhibited, as required by the act, at the church-door, and that no objection was made

to the vote. He then proved the circumstances under which the mistake had arisen in taking the original list to Worcester and sending the copy to Droitwich.

Mr. Harrison then called evidence to shew that the voter had originally a right to be upon the list, which failed, as it was proved that he had not paid his assessed taxes in respect of the house, and the Committee decided that the vote could not be allowed on account of the voter not having paid his taxes.

Thomas Lawrence's case.

Declarations of a voter, being an agent, received when the validity of his vote is in question.

In this case the voter was objected to by the petitioner, on the ground that he was a paid agent of the sitting member, either during the election or within six months previously thereto, or fourteen days after the completion thereof, within the meaning of the statute (*a*).

It appeared by the evidence that the voter had been retained on the part of the sitting member, and it was proposed to give evidence of a conversation which the voter had with a witness who met him at an inn in the town, about a week before the election, when the conversation turned on their agency, and in which he admitted having received a retainer from the sitting member.

Mr. Hildyard objected to any declarations of the voter being received, except such as he had made at the poll, and cited the resolution of the Committee in *Harris's case.*

Mr. Joy contended that the declaration formed part of the *res gestæ*, that in the Courts of Law declarations accompanying an act are always admitted; that the declaration of the voter here was not to support the vote but to destroy it, and that a declaration to that effect might be admitted. *Rex* v. *The Inhabitants of Harwich* (*b*), *Bedfordshire case* (*c*), and the *Weymouth case.* The same doctrine is laid down in

(*a*) 7 & 8 Geo. 4, c. 37.
(*b*) 11 East, 587.
(*c*) 2 Luders, 411.

Rogers (*d*). The resolution in *Harris's case* is perfectly consistent with what we now propose to do. Here the witness goes into an inn and meets the voter, and the conversation commences on the subject of their retainers; what the voter said would therefore be a declaration accompanying an act, and would be part of the transaction, and proof of any transaction would be admissible to prove the agency. In the *Hertford case* (*e*) the declarations of agents before the revising barrister were received in proof of subsequent agency.

Mr. Hildyard.

The argument on the other side is a *petitio principii*. If the retainer can be proved by the declaration of the agent, then it followed that payment could be proved by his declaration likewise, which clearly could not be done. All the cases cited on the other side were cited in arguing *Harris*'s *case*, and the Committee should therefore adhere to their former decision.

The Committee were of opinion that the evidence might be received.

The vote was ultimately declared bad.

Lord Viscount Southwell's case.

An Irish peer who has not brought himself within the exception in the standing order of the House, is not entitled to vote, although he has been placed on the register.

In this case the counsel for the sitting member proposed to strike Lord Southwell's vote from the poll of the petitioner, (the petitioner having established an equality of votes with the sitting member,) on the ground of his being an Irish peer.

Mr. Serjt. Merewether, in opening this case, read the resolution of the House of Commons, "that no peer of this realm, except such peer of that part of the United Kingdom called Ireland, as shall for the time being be actually elected, and shall not have declined to serve for any county, city, or borough of Great Britain, hath any right to give his vote in the election of any member to serve in parliament."

(*d*) 2 Rogers, 218. (*e*) P. & K. 541.

Mr. Harrison objected to the other side going into this vote; the incapacity existed previously to the 31st of July, and no objection was taken to it, and it has accordingly been placed upon the register, and the vote must therefore be taken to be good. The fiftieth section of the Reform Act, after directing the overseers to attend with the lists before the barrister, enacts, that he shall return in the list of voters the names of all persons to whom no objection shall have been made, and then the proviso at the end of the clause goes on to say, that no person's name shall be expunged from the list, unless such notice as is required by the act shall have been given. The Committee then have no power to go into a disability which existed prior to the registration. This case stands on exactly the same footing as that of a disability incurred by the receipt of parochial relief; and it has been decided in the *Rochester case* (*f*), that the receipt of relief previously to the 31st of July cannot be proved, but that the receipt of it subsequently to that day could.

Mr. Serjt. Merewether.

In the *Rochester case* the Committee decided, in the case of a custom-house officer, that where a disability which existed prior to 31st of July, continued unremoved after that day, they would strike off the vote (*g*). The *Rochester case* laid down the law correctly. Courts of law hold the same doctrine in the case of corporate officers, and if there be a continuing disability, you may proceed against a corporate officer by *quo warranto*, although he has held his office for more than six years (*h*). Mr. Harrison has overlooked the very material distinction between the right to be registered and the right to vote. Lord Southwell was entitled, under the twenty-seventh section of the Reform Act, to be placed upon the register. The barrister had no power to strike his

(*f*) See *post*, *Collins's case*, p. 120.
(*g*) See *post*, *Wilkinson's case*, p. 96.
(*h*) *Rex* v. *Lawrence*, 2 Chit. Rep. 371.

name from the list of 10*l.* householders, because the incapacity for which we now attach his vote might have been removed before the period of the poll, for he might have been elected, and not declined to serve, for some county, city, or borough of Great Britain. The distinction is observed throughout the act, but it is more particularly observable in the provisions of the thirty-third section, which provides, "that no person shall be entitled to vote in the election of a member, &c. for any city or borough, save and except in respect of some right conferred by this act, or as a burgess or freeman, or as a freeman and liveryman, or in the case of a city or town being a county of itself, as a freeholder or burgage tenant, as hereinbefore mentioned. Provided always, that every person now having a right to vote in the election for any city or borough in virtue of any other qualification than as a burgess or freeman, or as a freeman and liveryman, or in the case of a city or town being a county of itself, as a freeholder or burgage tenant, as hereinbefore mentioned, shall retain such right of voting so long as he shall be qualified as an elector, according to the usages and customs of such city or borough, or any law now in force, and such person shall be entitled to vote in the election of a member, &c. for such city or borough, if duly registered according to the provisions hereinafter contained; but that no such person shall be so registered in any year unless he shall, on the last day of July in such year, be qualified as such elector in such manner as would entitle him then to vote, if such day were the day of election, and this act had not been passed, nor unless such person, where his qualification shall be in any city or borough, shall have resided" within the distance there mentioned. The proviso at the end of this clause enacts, that every such person shall for ever cease to enjoy such right of voting if his name shall have been omitted from the register for two successive years, unless, in conse-

quence of his having received parochial relief, or his absence on the naval or military service of his majesty. This clause then makes a distinction between those who are entitled to be placed on the register and those who are entitled to vote, the proviso applying to the rights reserved by the 33rd clause, and not to those created by the 27th. We are not seeking now to open the register by shewing that persons were either inserted or omitted from it otherwise than in consequence of the decision of the revising barrister, but we are disputing the right of Lord Southwell to vote, on account of an incapacity not removed before he polled, and which the revising barrister could not have noticed. Lord Southwell was entitled to be put on the register in respect of his property within the borough, and he would have been entitled to vote also, if he had brought himself within the exception in the resolution, by being elected for some place in England before the Droitwich election; he has not brought himself within that exception, and is, of course, disqualified from voting. In the *Banbury case*(*i*) it was admitted that the vote of an Irish peer, not being elected a member for any place in England, was bad.

Mr. Harrison in reply.

This case cannot be gone into without opening the register, which all the Committees, before whom the question has arisen, have agreed in refusing to do. In discussing a preliminary objection like this, the Committee should throw overboard every thing connected with the vote itself, and consider it as if they had no intimation whether the vote, when inquired into, would prove bad or good. There is no law which prevents an Irish peer from voting at elections; the resolution of the House of Commons is only a resolution of one branch of the legislature, and not being the law of the land is not binding on the Committee: the decision in the *Rochester*

(*i*) Heywood on County Elections, 418.

case, which has been cited, was not upon a case of continuing disability, but upon a case where a change had taken place in the condition of the voter since the registration, which, in this case, has not taken place. The construction of the act contended for by the other side is not correct; the 27th section defines the right of voting, and the 50th directs the barrister to see who have that right on the 31st day of July. If the person whose name is on the list has no right to vote on that day, he has no right to vote at all.

The resolution of the Committee was, "that they were of opinion that there was no statute under which the barrister could have excluded from the list the name of Lord Southwell, but feeling themselves called upon to enforce the standing order of the House against the interference of peers in elections, they overruled the objection of the counsel for the petitioner."

On the poll-book it appeared that Thomas Anthony Viscount *Southall* voted for Mr. Foley. On the register this entry appeared: "Thomas Anthony Viscount Southwell, house and land, Hindlip."

Mr. Joy objected to the variance between the name on the register and that on the poll, and contended that the register would not be proof of the identity of the voter.

Mr. Hildyard then called a witness to prove the identity, and on asking the witness how Lord Southwell spelt his name,

Mr. Joy objected to the examination, and contended that the corrections which had been allowed by Committees had been only those of mistakes in the Christian name, but that a mistake in the surname could not be corrected when it appeared upon the poll.

Mistake on the poll of a surname, which is idem sonans with that on the register, corrected.

Mr. Hildyard referred to the *Middlesex case* (*k*), where several mistakes in the surnames, which were

(*k*) 2 Peck. 52.

idem sonans with the names of the voters, were corrected.

Mr. Joy having been heard in reply,

The Committee decided that the objection did not apply.

Evidence having been given of the identity, and of Lord Southwell being an Irish peer, the Committee resolved, that, in compliance with the standing order of the House of Commons, Lord Viscount Southwell must be struck off the poll.

The sitting member having established a majority over the petitioner, the Committee resolved that John Barnaby, Esq. was duly elected.

That neither the petition nor the defence to it were frivolous or vexatious.

And the Committee also reported to the House that they had altered the poll by striking off Thomas Cottrill, William Bullock, Thomas Lawrence, and Thomas Anthony Viscount Southwell, as not having any right to vote.

CASE V.

CITY OF ROCHESTER.

The Committee was appointed on the 17th of March, 1835, and consisted of the following gentlemen:

Nicholas William Ridley Colborne, Esq., M. P. for Wells, (*Chairman.*)

Charles Shaw Lefevre, Esq. M. P. for North Hampshire.

Henry Marsland, Esq. M. P. for Stockport.

Paul Beilby Thompson, Esq. M. P. for the East Riding of Yorkshire.

W. H. Scourfield, Esq. M. P. for Haverfordwest.

William Bolland, Esq. M. P. for Bolton.

Thomas Greene, Esq. M. P. for Lancaster Borough.

George Wilbraham, Esq. M. P. for South Cheshire.

James Loch, Esq. M. P. for Wick district of Boroughs.

Wadham Locke, Esq. M. P. for Devizes.

John M'Taggart, Esq. M. P. for Wigton district of Boroughs.

Petitioners:—Electors.

Sitting Member petitioned against:—Thomas Twisden Hodges, Esq.

Counsel for the Petitioners:—Mr. Harrison, and Mr. Pollock.

Agents:—Messrs. Dorrington and Jones, and Messrs. Twopenny and Essell, and Mr. Patten, Rochester.

Counsel for the Sitting Member:—Mr. Joy, Mr. Austin, and Mr. Chandless.

Agents:—Mr. Henry Prentis, and Mr Pratt, Rochester.

THE petition in this case was presented against the election and return of Mr. Hodges, by electors in the interest of Lord Charles Wellesley, who had been the

unsuccessful candidate at the previous election. The numbers, at the close of the poll, were, for Mr. Bernal 502, Mr. Hodges 443, and Lord Charles Wellesley 442. The case was one of scrutiny, and all the questions arose on the discussion of particular votes.

Thomas Martin's case.

March 18th and 19th. The parting with the occupation of the house in respect of which he was registered, and removal out of the borough, is a valid objection against a voter, whether the third question under the Reform Act has or has not been put to him at the poll.

Evidence was produced to shew that the voter who had been registered as a 10*l.* householder in respect of his occupation of the City Coffee House in Rochester, had, at the time he polled, quitted the occupation of those premises, and occupied the Union Flag public-house in the borough of Chatham. At the commencement of the case the chairman inquired whether the third question permitted by the Reform Act, as to change of occupation, had been put to the voter before he polled. This question was answered in the affirmative. It was at the same time conceded by the counsel on both sides, that if the loss of the qualification was established, it was not necessary, in order to invalidate the vote, that the third question should be proved to have been put at the poll.

Mr. Pollock against the vote.

Mr. Austin in support of it.

The arguments turned solely on the sufficiency of the proof of the voter having quitted the occupation of his coffee-house in Rochester.

The Committee determined the vote to be bad.

Semble. A Committee will not receive the notes of a revising barrister who is not examined before them as evidence of what passed before him at the registration.

Samuel Wilde's case.

The objection to this voter was, that he had not paid, on or before the 20th of the preceding July, all the assessed taxes due from him on the 6th of the preceding April, in respect of the premises for which he was registered. It was stated that the same objection had been taken to him at the registration before the revising barrister. Mr. Bosanquet, the revising barrister, declined to be called as a witness, but it was stated that he was willing, if requested by the chairman, to hand in

his notes of what took place before him. This proposition was supported by the counsel for the petitioners, and opposed by those for the sitting member.

Mr. Austin against the reception of the notes.

The Committee have no power to examine a judicial officer, as the revising barrister is, unless he chooses voluntarily to give his evidence, which was done, in one single instance, in the *New Sarum case*(a), since the passing of the Reform Act. In other cases, however, revising barristers, although summoned, have refused to attend before Committees. Mr. Austin stated that he had, in the *Bedford case*, declined to appear before the Committee to give evidence as to what had occurred before him as the revising barrister of that town, and the party who summoned him had not attempted to enforce their summons. It is not, however, necessary here to discuss the question of the power of a court of appeal to examine as a witness the judge from whose decision the appeal is instituted; for it is clear, at all events, that the notes of the revising barrister cannot be used as evidence in any way. If he was called as a witness, he might indeed be permitted to refer to them to assist his memory, in the same way as an arbitrator is allowed when called as a witness, respecting matters which occurred in the arbitration, to have recourse to his notes taken at the time. It is true that the notes of judges in all cases arising upon objections not appearing on the record, are, by a kind of courtesy among themselves, received as the best account of what passed at trials at Nisi Prius; but they are never treated as evidence, and would be inadmissible to prove any fact whatever. Now a Committee sit in some degree as a judge and jury upon a new trial, to try again the questions of fact that were disputed before the barrister;

(a) *Smith's case*, P. & K. 247. The registering barristers appeared and gave evidence in the Irish cases of *Longford*, P. & K. 196, and *Monaghan*, *ante*, p. 32.

they do not sit as the judges in Banc to determine whether a new trial shall or shall not be granted, and they cannot, therefore, receive the notes that are now tendered to them upon any such analogy.

Mr. Pollock in support of the reception of the notes.

The objection by the revising barrister to suffering himself to be examined as a witness, is one involving a principle of great importance, arising from the interpretation that has been put by Committees on the Reform Act. By that act the revising barristers are directed to hold open Courts, and the unanimous determination of all the Committees, who have been called upon to decide the point, has now established as law that they have no jurisdiction, except upon cases which have been adjudicated upon by revising barristers in those Courts, or which have arisen subsequently to the registration. The revising barrister is, therefore, a judge, and the Committee are now sitting as a court of appeal from his decisions as a judge. His notes must consequently not be regarded as loose memoranda to refresh his memory, but as notes made by a judge for judicial purposes, and to be considered by this court of appeal in the same way as the notes of every other judge are considered by every other court of appeal, as the best and most authentic account of what passed at the trial, from the decision in which the appeal is instituted (*b*). In appeals from the decisions of the quarter sessions, the case drawn by the justices is always received as indisputable evidence of the facts stated in it. It is most desirable that Committees should be thus furnished with valuable and authentic information of what

(*b*) The Court of King's Bench, upon motions for new trials in causes tried by the sheriff or judge of an inferior Court, under 3 & 4 Wm. IV. c. 41, s. 17, require the notes of the presiding judge at the trial to be produced and verified by affidavit, *Mansfield* v. *Briarley*, 1 Ad. & El. 347; *Burney* v. *Mawson*, Ibid. 348.

passed before the judge whose decision they are called upon to review.

Mr. Austin in reply.

The cases in which the Courts in Westminster Hall receive the notes of a judge are not cases of appeal, but cases where they sit to determine whether a new inquiry shall be had, or what was the legal effect of the evidence on the trial. Committees are in a different situation, for their jurisdiction is, when there has been a judgment of the barrister, to re-try the case as a judge and jury. The practice of the Courts, under dissimilar circumstances, cannot, therefore, serve as a guide to Committees, nor can they proceed upon any supposed analogy between an appeal to them from the decision of a revising barrister, and an application to the King's Bench to quash or affirm the orders of justices at quarter sessions; for the decision of the justices is conclusive as to the facts, and the King's Bench only decides whether they have rightly determined the law applicable to those facts; but Committees are bound to decide both upon the law and the facts.

Mr. Pollock ultimately declined to press further the reception of the notes, and no express determination was therefore made upon the point by the Committee, but the Chairman informed Mr. Bosanquet that the Committee would not detain him any longer, and returned his notes to him.

No witness can be examined before a Committee in cases where the revising barrister had jurisdiction, unless he has been examined before the revising barrister, or

Evidence was then given of the service on the overseers of a notice of objection to the name of the voter being retained in the lists, and that the objector subsequently attended before the revising barrister, and supported his objection on the ground of non-payment by the voter of his taxes in due time. A collector of taxes was then called, who stated, on the voir dire, that he had not been examined before the revising barrister. An objection was then taken to his being further examined, on the ground that no witness could be ex-

having had notice to attend before the revising barrister, has refused to attend, or having been tendered for examination has been rejected by the revising barrister.

amined before a Committee who had not been previously examined before the revising barrister.

Mr. Austin in support of the objection.

According to the true spirit and construction of the Reform Act, no objection can be gone into, no p· per or instrument produced, and no witness examined before a Committee which has not been taken, produced, or examined before the revising barrister. Every Committee that has sat on English election petitions, since the passing of that act, has determined that they had no jurisdiction except in cases upon which the revising barrister had made "a decision." The extent and nature of their jurisdiction has, however, been the subject of some difference of opinion. In the early English cases, the *Petersfield*(*c*), *Bedford*(*d*), and *Oxford*(*e*), no question was raised whether parties should be confined to the points they had taken, and the evidence they had given before the revising barrister; but had it been made, there could be little doubt in what way those Committees, with the strong feelings they expressed in favour of closing the register, would have decided it. In the *Ripon case*(*f*), however, a resolution was come to by the Committee on the vote of George Snowden, which appears to have been considered as having the effect of determining that an objection not taken before the revising barrister may be taken before a Committee. But the words of that resolution by no means express such an intention. They are thus:—"that this Committee considers itself competent to hear evidence as to whether George Snowden was rated or not." And the question before the barrister having been, whether the voter had occupied the property in respect of which he was registered for a sufficient time before the 31st of July, the rate might very properly have been referred to by the Committee, as evidence of the occupation, with-

(*c*) P. & K. 31.
(*d*) P. & K. 112.
(*e*) P. & K. 58.
(*f*) P. & K. 203.

out their intending or desiring to admit a point to be discussed before them, which had not been contended before the barrister. Whatever doubts might, however, have been raised by this decision of the *Ripon* Committee, were removed by the determination of the *New Sarum* Committee (*g*), who, on the vote of Joseph Burfoot, decided that before evidence could be given of the circumstances affecting the vote, the grounds on which the barrister decided must be shewn. Thus there is at least one clear determination of a Committee, that no objection shall be entered into before it, which was not taken before the revising barrister.

Upon the point of admitting further evidence there is no distinct determination of a Committee on an English case; but in the Scotch case of *Linlithgowshire* (*h*), the Committee determined that they would not receive either documentary or parol evidence that had not been produced before the sheriff, whose office, in the registration of voters, corresponds to that of the revising barristers in England; and they even proceeded so far in the exercise of their discretion as not to permit a case to be entered into where the voter (*i*), who had been rejected by the sheriff, had not appealed to the Scotch Court of Appeal, on the ground that evidence might possibly be thus brought before them which had not been produced before the sheriff. In the *Clonmel case* (*k*) a Committee came to a similar determination upon the construction of the Irish Reform Act; and determined "that they would only receive such evidence as was taken or rejected by the registering barrister, unless it was shewn that the party was precluded from giving further evidence by the decision or conduct of the registering barrister." The result of all the cases therefore is, that, under the English Reform Act, no point can be raised

(*g*) P. & K. 258.
(*h*) *John Mair's case*, P. & K. 291.
(*i*) *Ritchie's case*, P. & K. 296.
(*k*) P. & K. 431.

before a Committee that has not been raised before the revising barrister; and that under the Irish and Scotch Reform Acts no evidence can be produced before Committees which has not previously been submitted to the officers holding similar situations in Scotland and Ireland to that of revising barristers in England. This Committee are now called upon, for the first time, to determine, under the English Reform Act, whether they will hold, as has been done under the Reform Acts for both Ireland and Scotland, that no witness or instrument of evidence can be received that was not either produced or tendered before the revising barrister. A contrary determination would tend, in a great measure, to open the register, which it has been so much the object of all preceding Committees to close, and would enable a party, by making an illusory objection before the barrister, and supporting it by insufficient evidence, to take by surprise before a Committee a candidate who had proceeded to an election on the faith of the register. No favour ought to be shewn to parties who, having the opportunity of producing their evidence at a trifling expense, and with little difficulty, before the barrister, decline to avail themselves of that opportunity, and prefer putting their opponents to enormous expense by bringing it forward for the first time before a Committee.

Mr. Pollock against the objection.

The English Reform Act has given no power whatever to parties to summon witnesses before the revising barrister, it would, therefore, be most unjust to prevent them from availing themselves of evidence before a Committee which they never had previously the means of procuring. It is absurd to suppose that any one would keep back evidence before a revising barrister, in order to have an opportunity, at a twenty-fold expense to himself, of bringing it forwards before a Committee. It is admitted that no English Committee has yet decided

that a man is to be debarred from proving his case before a Committee because he had no means of proving it before the barrister. The decision of the Committee, in the Scotch case of Linlithgowshire, proceeded upon the construction of an act perfectly different from the English Reform Act, and adapted to a perfectly different system of laws; for the Scotch Reform Act gave a power of appeal from the sheriff to a Court, which does not exist in the English system of registration, and it confines the appellant to that Court to the evidence which he had produced before the sheriff, and the Linlithgowshire Committee only decided that they would not receive evidence which the legislature had forbidden that Court of Appeal to receive, and that they would not permit a person to come before them who had neglected to avail himself of the course of appeal provided for him in his own country. In the *Clonmel case* the Committee came to a decision utterly at variance with the determinations and the practice of every Committee which had previously sat upon Irish or upon English elections, and which was, in the very next session, distinctly overruled in the *Monaghan case* (*l*). If the analogy which was insisted upon in the preceding argument is to be continued, and the Committee are to be considered as a judge and jury sitting on a new trial, any witness whatever may be called before them, for nothing is more settled in practice than that upon a new trial all evidence whatever, whether brought forward or not on the former one, may be used by either party. In the more analogous case too of an appeal to quarter sessions from the order of a magistrate, before whom the pauper is generally the only person examined, as the voter is before the barrister, it is well known that parties are not confined on the appeal to the evidence they produced before the magistrate.

(*l*) *Ante*, p. 29.

Mr. Austin in reply.

Although the *Monaghan* Committee came to a different decision from that of the *Clonmel*, with regard to the admission of evidence not before the barrister, yet they perfectly coincided with the *New Sarum* Committee in not allowing points to be raised before them which had not been taken in the Court below. Their decision may have been influenced too by considerations of the state of the county of Monaghan at the time of the registration, which would not of course apply to the state of an English city in 1834. The only question is, whether the decision of the *Clonmel* Committee, which contains a special exception providing for cases where parties were prevented, by the conduct of the barrister, from bringing evidence before him, is or is not right, or whether persons who neglected their interests when it was in their power to have protected them by calling witnesses, are now to be favoured by being allowed to produce such witnesses, without even attempting to excuse their want of diligence at the proper time.

In the instance which has been alluded to on the other side, of appeals from orders of justices, it is true that evidence not adduced before the magistrate may be brought before the quarter sessions; but before the Court of King's Bench, which to a certain extent, like a Committee of the House of Commons, is the ultimate court of appeal, the only evidence received is that which is put in before the quarter sessions. There is, however, this difference between the two tribunals, the facts proved in evidence before the quarter sessions are brought to the cognizance of the King's Bench, by a case drawn under the direction of the inferior Court itself; but a Committee of the House of Commons have no power of directing or receiving such a case; and they, therefore, must have the same facts that were proved before the revising barrister proved to them by the same witnesses as attended before him, unless from some decision or erroneous conduct on his part, wit-

nesses were improperly prevented from being produced before him, in order to enable them, as a judge and jury on a new trial, to determine whether his decision was correct as to the facts; and they must have the same points argued before them, in order to enable them to determine, as a Court sitting in banc, whether his judgment was right as to the law applicable to those facts. The only power indeed the Committee possessed under the 60th section of the Reform Act, is to determine whether, in consequence of the decision of the revising barrister, the name of any person is improperly inserted or retained in the register; the propriety or impropriety of that decision must depend upon the witnesses produced, the facts proved, and the points taken before the barrister; but if the Committee proceed to hear different witnesses upon different facts, and to suffer different points to be taken before them, from those which were in dispute before the revising barrister, they no longer sit in any way as a Court of appeal, to decide upon the propriety or impropriety of the decision of the Court below, but as an original Court adjudicating upon new cases which had never before been the subject of discussion before any tribunal, and they would thus exceed the jurisdiction which the Reform Act has ascribed to them, and which has been scrupulously adhered to by preceding Committees.

At the conclusion of the argument the Chairman inquired whether it was the desire of the counsel that the Committee should confine their determination to the question immediately before them, namely, the reception of witnesses not examined before the barrister; or whether they should also take into consideration the question of permitting objections to be taken before them, which had not been taken before the barrister.

Mr. Pollock requested they would confine themselves to the consideration of the first question, which was the only one arising upon the present objection.

The Committee resolved, " That the evidence be confined to those witnesses that were examined before the revising barrister, except such witnesses as shall have had notice to attend before the revising barrister and shall not have attended, or such witnesses as shall have been tendered for examination before the revising barrister and shall have been rejected by him.

The calling on and desiring a witness to attend before a revising barrister, is a sufficient notice to him to attend.

The objector, a solicitor, was then examined, and proved that he had called upon the collector now proposed to be examined, and desired him to attend before the barrister as a witness; that the collector said it would not be convenient for him to attend himself, but that his colleague should attend. It appeared that this collector was the only person cognizant of the facts, and that his colleague was unable to prove them.

Mr. Austin still objected to the examining the collector as a witness, and insisted that his colleague, who actually attended before the revising barrister, ought to be called.

Mr. Pollock, contrà, insisted that it was now clearly proved that the collector had had notice to attend, and therefore that he might be examined.

The Committee intimated their opinion that the collector was a witness who came within the exception in their resolution, and that he might be examined.

The collector was accordingly called and proved the non-payment by the voter of his taxes due on the 20th of April before the 20th of July, and the subsequent payment by him of them on the 5th of August. It was stated that his colleague who attended before the barrister had not received the taxes, and consequently could not prove the date of their payment, which was the reason why the barrister retained the name on the lists.

The Committee determined the vote to be bad.

David Hermitage's case.

The objection to this voter, who was a freeman, was, that he had ceased to reside within seven statute miles from the place where the poll for the city of Rochester had been taken previously to the passing of the Reform Act. It was proved, that on the 9th of the preceding December he had removed from the house where he had resided near Rochester to a place called Wilmington, about thirteen miles from it. Some doubt was at first raised whether he had quitted his former residence absolutely, or whether he still retained an animus revertendi. The Committee, however, having expressed their opinion that he had quitted it without any animus revertendi, and had ceased to reside within the seven miles at the time of the election, the only question that remained was, whether a freeman on the register was disqualified from voting because he had ceased to reside within the statutable distance after the 31st of the preceding July and previously to the election.

It is no objection to the vote of a registered freeman that he has ceased, at the period of the election, to reside within seven miles of the place where the poll for a city was taken previously to the passing of the Reform Act.

Mr. Austin in support of the vote (*m*).

Every freeman who is duly placed on the register is entitled to vote at all elections that may occur during the time that register is in force, whether he continues to reside within seven statute miles from the original polling place of his city or borough or not. The qualification in respect of which his name is inserted in the register is the being a freeman; if he loses that qualification by ceasing to be a freeman he will be unable to answer the third question which may be tendered to him at the poll, and will consequently be disqualified from voting; but if he retains his qualification by remaining a freeman, there is nothing either in the letter or the spirit of the Reform Act to prevent him from voting,

(*m*) This case was argued by Mr. Austin and Mr. Pollock on the 19th day of March; but on account of its importance Mr. Harrison was allowed to re-argue it on the following day, Mr. Austin having a second reply.

or to enable a Committee to disallow his vote upon a scrutiny. It will, however, be argued on the other side, that the residence within seven miles of the ancient polling place, which the legislature has required as a condition previous to the name of a freeman being inserted in the register, forms part of his qualification, and that by a removal of his residence from within the requisite distance after the registration, he loses that qualification and becomes incapacitated from voting. It is unnecessary to contend that residence within a requisite distance formed no part of the electoral qualification of a freeman before the Reform Act. If, therefore, it had now become so, it must have been by virtue of some enactment in that statute. There is, however, on the contrary, not only no enactment of the kind, but great care and discrimination has been shewn by the legislature in distinguishing the qualifications of the different classes of persons entitled to vote, from the conditions necessary to be observed by them in order to have their names inserted in the register.

The first section of the Reform Act relating to the rights of voters for cities and boroughs is the 27th, which confers the elective franchise on the 10*l.* householders; and in this, as throughout the act, the distinction between the qualification to vote and the title to be registered is strictly preserved. It commences by enacting, "that every male person of full age and not subject to any legal incapacity, who shall occupy within such city or borough, as owner or tenant, any house, warehouse, &c. of the clear yearly value of not less than 10*l.*, shall, if duly registered according to the provisions hereinafter contained, be entitled to vote in the election of a member or members to serve in any future parliament for such city or borough." It is evident then that the qualification to enable the 10*l.* householder to vote is the occupation of a house, &c. of not less than 10*l.* clear yearly value; but this qualification is rendered subject to the condition of being duly registered according to the pro-

visions thereinafter contained. The remainder of the section goes on to detail those provisions, and the conditions it requires for registration are, occupation of the premises for the period of twelve months previous to the 31st of July in each year, the having been rated in respect of them for the same time, and having paid on the 20th of the preceding July all rates and assessed taxes which had become payable from the householder previous to the 6th of the preceding April, and the having resided for six months previously to the last day of July preceding within the city or borough, or seven statute miles thereof. All these conditions being restraints upon the franchise granted in the preceding part of the section, appear in the form of provisoes, which, by a well-known rule of law, must be construed strictly. Is it possible, however, to confound conditions requiring residence and rating during certain fixed periods and payments at certain fixed dates, all which periods and dates are to terminate before the registration, with the qualification to vote which cannot be enjoyed till after the registration? Would any one contend that a registered 10*l.* householder could not vote because he had not paid a rate made after the 20th of July, or even after the 6th of April? yet this proposition must be established if residence within the seven miles is to be considered as part of the 10*l.* householder's qualification to vote, for both residence and payment of rates are required under a proviso in the same clause of the statute, and if the one is to be considered as part of the qualification so must the other be. Neither of them can, however, be so considered, for the qualification consisting of the occupation of the 10*l.* house is clearly distinguished from the condition to be registered. This is made more manifest by the provisions in the 58th section, which directs, that "no inquiry shall be permitted at the time of polling as to the right of any person to vote, except only as follows; that the returning officer or his

respective deputy shall, if required on behalf of any candidate, put to any voter at the time of tendering his vote, and not afterwards, the following (three) questions." Two of these questions relate to the identity of the voter and his not having previously voted; the third is material to the present subject; it is, " have you the same qualification for which your name was originally inserted in the register of voters now in force for the county or city, as the case may be, *specifying in each case the particulars of the qualification as described in the register.*" The description of the qualification of a 10*l.* householder in the register would, according to the form, Schedule I, No. 1, be house, warehouse, shop or counting-house. The question to be administered to the 10*l.* householder is therefore, have you the same qualification, that is, house, warehouse, &c. for which your name was originally inserted in the register? Thus we have not only a definition by the legislature of what it meant by the word qualification, but an express enactment that no other inquiry, such as questions as to the rating or residence, should be made at the poll. If then the 10*l.* householder had not paid all his rates and taxes, or had even ceased to reside within the requisite distance from his borough, so that he retains the occupation of his house, he can safely answer the third question, and cannot be excluded from voting. If indeed any further inquiries were permitted, the whole object of the act, in creating a register in place of the scrutiny before the returning officer, would be defeated.

The same care with which the legislature has distinguished the qualification to vote from the conditions imposed previous to registration in the case of the 10*l.* householders, is observable in the schedules relative to voters for counties. Thus in the form of notice of claim to be given to overseers by claimants for counties, Schedule H, No. 2, the nature of the qualification to vote, namely, freehold house, &c. is distinguished from

the place of abode, and no notice is taken of the conditions, viz. of possession of their qualifications for certain fixed periods of six and twelve months previous to the last day of July in every year, imposed on the county voters by the 26th section. Thus also in the form for the list of voters in the Schedule H, No. 3, freehold house, copyhold field, &c. are given as examples of the nature of qualifications in the column headed with that title; and if the third question is to be put at the poll to a county voter, it must be, have you the same qualification, &c.? that is, freehold house or copyhold field.

The legislature having thus, with regard to franchises which it has either wholly conferred or greatly extended, strictly observed the distinction between the qualification to vote and the title to be registered, does not abandon it with regard to the reserved rights of voting. Thus the 31st section, which reserved the rights of freeholders and burgage tenants to vote in counties of cities or towns, provides " that every such freeholder or burgage tenant shall be entitled to vote in the election, &c. provided he shall be duly registered according to the provisions hereinafter contained;" and then it goes on to detail the conditions required previously to registration, namely, possession of the freehold or burgage tenement for twelve calendar months, and residence within the city or town, or seven miles thereof, for six calendar months previous to the 31st of July. The 32d section, which reserves the rights of freemen, provides in the same form, " that every person who would have been entitled to vote in the election of a member, &c. either as a burgess or freeman, or in the city of London as a freeman and liveryman, if this act had not passed, shall be entitled to vote in such election, provided such person shall be duly registered according to the provisions hereinafter contained;" and then it goes on in the same way as all the other sections, by which either rights are conferred or reserved, to detail the provisions imposing the condi-

tions necessary for registration, "but that no such person shall be so registered in any year unless he shall, on the last day of July in such year, be qualified in such manner as would entitle him then to vote if such day were the day of election and this act had not been passed, nor unless where he shall be a burgess or freeman, or freeman and liveryman of any city or borough, he shall have resided for six calendar months previous to the last day of July in such year, within such city or borough, or within seven statute miles from the place where the poll for such city or borough shall have been heretofore taken, or if a freeman of a contributory borough, then unless he shall have resided within such borough or seven statute miles from the place mentioned in respect of it in the schedule marked E. 2." Thus the qualification of a freeman is his freedom. In the form of list of freemen directed to be published by the town clerks, Schedule I, No. 3, there are only two columns, one is headed "Christian name and surname of each freeman at full length;" the other, "place of his abode." If a freeman is objected to, the objection is to his being retained in the list of freemen, and that is so stated in the form, Schedule I, No. 3. If the third question is put to him at the poll, it must be in the form, do you retain the same qualification, &c.? that is, "do you continue a freeman?" What is there in any of these forms to superinduce on the qualification of a freeman the restriction of residence within seven miles of his city up to the time of his polling? No inquiry can then be made of him about it by the express provisions of the act. If in any manner it could be, all the mischiefs intended to be shut out by the institution of a register, would be let in by renewing before the returning officer the long inquiries as to the fact and arguments as to the mode of measuring distances—whether by the crow's flight or by the nearest road—which are endless topics of discussion before the revising barrister.

The law therefore must be taken to be, that a freeman has, during a period of six months in every year, a qualification to vote, without any necessity for residence within seven miles of his borough. During the six months previous to the 31st of July it is indeed necessary for him to reside in order to be placed on the register for the following year. But what is there to prevent a freeman from voting during the time he is non-resident? If indeed the Committee were to decide that he could not, the anomaly would happen that, as he might return and reside the requisite time before the 31st of July, the revising barrister might be obliged to put on the register for his residence, during the time the Committee were sitting, the very man whom a Committee might have struck off on account of his non-residence. The requiring residence at any period is a restriction imposed upon the franchise of a freeman, and, like all restrictions, ought not to be extended by implication or supposition. It is quite sufficient for all useful purposes that the qualification of every voter should be subjected once a year to the scrutiny before the barrister, and inquiries like the present would only tend to increase expense and prolong the angry feelings of elections after the registration had been closed and the poll terminated.

Mr. Harrison and Mr. Pollock against the vote.

The Reform Act is a remedial statute, as is clear from the preamble to it: "Whereas it is expedient to take effectual measures for correcting divers abuses that have prevailed in the choice of members to serve in the Commons' House of Parliament, to deprive many inconsiderable places of the right of returning members, to grant such privileges to large, populous and wealthy towns, to increase the number of knights of the shire, to extend the elective franchise to many of his Majesty's subjects who have not heretofore enjoyed the same, and to diminish the expense of elections." It must, therefore, be construed by the same rules as other remedial

statutes, and the first point for the consideration of the Committee is, what those rules are. They are very distinctly laid down by Blackstone, in his Commentaries, in these terms: "There are three points to be considered in the construction of all remedial statutes; the old law, the mischief and the remedy; that is, how the common law stood at the making of the act; what the mischief was for which the common law did not provide; and what remedy the Parliament have provided to cure this mischief; and it is the business of the judges so to construe the act as to suppress the mischief and advance the remedy." (*n*) These rules are fully borne out by the cases which are cited by Blackstone in support of them, and which are taken from Lord Coke's report of *Lincoln College case* (*o*). With regard to the weight that ought to be given to the preamble, and the intention of the framers in the interpretation of a statute, it may be as well to consider what Lord Coke tells us, 4 Instit. cap. 74: "Every statute ought to be expounded according to the intent of them that made it, where the words thereof are doubtful and uncertain, and according to the rehearsal of the statute." And again, in Co. Litt. 11 b, that arguments and proofs as to statutes must be drawn from their rehearsals or preambles. (*p*)

Taking then the rules laid down by Blackstone and Lord Coke as the guide which the Committee ought to follow, it will be necessary to see what the old law was with regard to the subject now under consideration. By the law, previous to the Reform Act, freemen were under no obligation to reside within any distance of their city or borough. From thence arose the mischief that every candidate was obliged to bring up the non-resident freemen to the poll, from whatever part of the world they might happen to live in. The expenses incurred from this cause were enormous. Reasonable ex-

(*n*) 1 Black. Com. s. 3, p. 87.
(*o*) 3 Rep. 59, 60.
(*p*) See *Ethersay* v. *Jackson*, 8 T. R. 256; *Johnes* v. *Johnes*, 3 Dow. 14.

penses were allowed by Committees of the House of Commons to be legal, and the bills that were introduced to prevent the payment of such expenses were thrown out by the House of Lords. It was, however, extremely difficult to distinguish between reasonable and unreasonable expenses, and thus an opening was made for treating and bribery. One of the principal objects of the framers of the Reform Act, consequently, was to remedy this mischief by putting an end to the non-resident voters of all kinds, and this was especially regarded in the recitals in the preamble of it, "that it was expedient to correct divers abuses that had prevailed in the choice of members to serve in the Commons' House of Parliament," and "to diminish the expenses of elections." In every section, therefore, which relates to the right of voting for cities and boroughs, that act expressly provides that no person shall be registered unless he is resident within that city or borough, or seven miles from it; and it also provides with respect to the rights of freemen reserved in the 32d section, and of the other rights reserved in the 33d section, "that no such person shall be so registered in any year unless he shall, on the last day of July in such year, be qualified in such manner as would entitle him then to vote if such day were the day of election and this act had not been passed, nor unless he shall have resided for six calendar months next previous to the last day of July within such city or borough, or within seven statute miles from the place where the poll for such city or borough shall heretofore have been taken." Now it is perfectly clear that residence within the required distance is absolutely necessary to entitle a freeman to be registered, it must therefore be considered to form part of his qualification to be registered; but if it forms part of his qualification to be registered, it must also form part of his qualification to vote, for the qualification to be registered is expressly directed to be such as would entitle him to vote if the 31st of July were the

day of election. How then is it possible to contend that the qualification on the real day of election is to be less perfect than on the supposed one for the purposes of registration.

The decision of this Committee in the case of change of occupation by a 10*l.* householder, which is in accordance both with the decisions of prior Committees and the spirit of the Reform Act, has established the point that a voter must have the same qualification at the poll in respect of which his name is inserted in the register. How then can a freeman, whose name is inserted in respect of his freedom and residence within a limited distance, be considered to retain the same qualification when he has removed his residence from within that distance. If removal from one house to another within a borough, after the 31st of July, is to disfranchise a 10*l.* householder, the class most favoured by the provisions of the act, surely the removal from the borough and its neighbourhood altogether must be considered to work a deprivation of the franchise from one of a class the least favoured and the least deserving of favour of all those to whom that franchise belongs. If by the determination of the Committee the class of non-resident freemen, which it was one of the principal objects of the Reform Act to destroy, are again to be revived, all the expenses and all the corruption which their existence gave rise to will again be called into action, and the intention of its framers will be utterly frustrated. It is to be hoped, however, that this will not be the case, but that the Committee will consider it their duty, as Blackstone says it is the business of the judges, so to construe the act as to suppress the mischief arising from the existence of a body of non-resident voters, and advance the remedy provided by it in vesting the right of returning members to parliament in the residents alone in every city and borough.

Mr. Austin in reply.

The Committee have been called upon to interpret the Reform Act not according to the words, but, according to the supposed intention of the framers of the statute, to diminish the expenses of elections, by getting rid of the non-resident freemen. The first question then is, whether, if such a mode of construction is to be admitted as would render invalid the votes of those freemen who may have changed their residence since the 31st of July, it would have the effect of diminishing the expenses of elections? By the provisions of the act no freeman can be placed on the register who has not resided for six months, before the 31st of July, within seven miles of his city; the barrister can only inquire as to his residence up to that period; if therefore the vote of a freeman is to be avoided for any subsequent removal, it must be on an inquiry before the returning officer or before a Committee. The act, however, itself specially provides that there shall be no inquiry before the returning officer, and it is therefore before a Committee that the inquiry must be made. If this is the true construction of the act, when we consider the variety of legal questions the proof of disputed residency gives rise to, of the bona fides, of the animus revertendi, of double residence, of the measurement of distances, the number of surveyors, overseers and witnesses of every kind, that day after day whilst these questions are discussed, must be kept in attendance on the Committee, the statement in the preamble of the act that it was passed to diminish the expense of elections, will only sound in our ears as a mockery. What, however, is the utmost actual expense that could be incurred if, under an opposite construction, all the freemen objected to on both sides for non-residency are held good votes. The whole constituency of Rochester furnishes but twenty-two; and if reasonable travelling expenses at *3l.* per head were allowed them, (although it must be re-

membered that Lord Mahon's bill was thrown out in the House of Lords because Lord Mansfield declared that all such payments were illegal.) the whole amount would not be equal to that of one day's scrutiny before a Committee.

The doctrine, however, that acts of parliament are to be construed by any supposed intention of their framers, which always must be, as Lord Bacon tells us, "divinatio et non interpretatio legum," is completely exploded. Whatever laxity may have crept into some earlier decisions, the old maxim handed down to us by Lord Coke, (*q*) "Optima statuti interpretatio est, omnibus particulis ejusdem inspectis, ipsum statutum," is now recognized in every court of law and equity. "Where," says Mr. Justice Bayley, in *Rex* v. *Stoke Damerel* (*r*), the legislature in a very modern act of parliament have used words of a plain and definite import, it is very dangerous to put upon them a construction, the effect of which will be to hold that the legislature did not mean what they have expressed." In *Rex* v. *Ramsgate* (*s*) similar language was used by the same judge. In *Rex* v. *Skone* (*t*), where an attempt was made, as in the present case, to insert a provision in a statute from the supposed intention of its framers, Lord Ellenborough says, "it seems as if the omission were intentional, but if it were not intended, we can only say of the legislature, quod voluit non dixit." Even where judges have conceived that the words do not express the intention of the legislature, they have thought themselves bound by such words. The established law upon this point is correctly stated by Mr. Dwarris in his Treatise on Statutes, "if words go beyond the intention, it rests with the legislature to make an alteration." "Our decision," said Lord Tenterden in a recent judgment, "may perhaps, in this particular case, operate to

(*q*) *Bonham's case*, 8 Rep. 117.
(*r*) 7 Bar. & Cress. 568.
(*s*) 6 B. & C. 715.
(*t*) 6 East, 518.

defeat the object of the statute; but it is better to abide by this consequence, than to put upon it a construction not warranted by the words of the act, in order to give effect to what we may suppose to be the intention of the legislature (*u*)." In another case, the same distinguished judge said, "the words may probably go beyond the intention, but if they do, it rests with the legislature to make an alteration; the duty of the Court is only to construe and give effect to the provision (*x*)." "It is safer," says Mr. J. Ashurst in a judgment on the game laws, "to adopt what the legislature has actually said, than to suppose what they meant to say. The heir apparent they have qualified, from a supposition that the esquire was so already. I cannot think it was their intention purposely to exclude the father, but in fact they have done it (*y*)."

With respect, however, to the supposed intention of the legislature, supposing it to be capable of being taken into consideration by the Committee, it may be as well to observe the difference which exists in the different Reform Acts upon this subject. In the English and Scotch Acts, where the registration is annual, no question is allowed to be put at the poll as to the cessation of residence after the registration. In the Irish Reform Act, however, where the voter, whose name is once inserted in the register, retains his right of voting for eight years, a greater strictness was, from that circumstance, required, and not only is the freeman obliged, in the form of affidavit in the Schedule C, No. 9, at the registration, to swear that he was a resident freeman and had been so for the last six months, but in the ninth section, by which their rights were reserved, it is specially provided that after such registration as is directed by this act, but so long only as they (the freemen) shall reside within the said city or borough, or within seven statute

(*u*) *Rex* v. *Barham*, 8 B. & C. 104.

(*x*) *Notley* v. *Buck*, 8 B. & C. 164.

(*y*) 1 T. R. 52.

miles of the usual place of election therein, (they shall) have and enjoy such right of voting as fully and in like manner as if this act had not been passed," and his oath at the poll (Schedule B.) is to the same effect. Thus where the legislature has intended that non-resident freemen, although registered, shall not vote, it has expressed its intention; but where it is silent upon the subject, if its supposed objects are to be at all taken into consideration, it must be presumed that the sound policy was preferred of allowing a few persons to retain their electoral privilege for some months after they had quitted their residences, to laying open a wide field for disputes at the poll or contests before an Election Committee.

The Committee determined that the vote of Hermitage Day was a good vote.

George Wilkinson's case.

March 22. Under allegations in a petition that persons "disqualified by the provisions of the different statutes made for securing the freedom of election," and "that persons who were disqualified and not entitled voters had voted," petitioners were allowed to enter into evidence to prove a voter disqualified as a paid agent and flagman, by

The objections to this voter in the list delivered in by the petitioners were, 1st. That he had been employed as an officer in the customs within a year of the election: 2ndly. That he was a paid agent and flagman of the sitting member.

A preliminary objection was taken on the part of the sitting member, that the petitioners were not entitled, under any allegation in their petition, to go into the second objection.

There was an allegation in the petition, that "many persons who were registered as electors, as freemen, or in respect of occupation or residence, for the said city by the revising barrister, became disqualified as electors for the said city between the period of the register or registers being revised and signed by the barrister, and the time of the holding of the election for the said city, and were disqualified and not entitled to vote at the said election by having ceased to reside as freemen within the said city, or the limits prescribed by the said act, or by having parted with or sold, or otherwise

ceased to be possessed of, or to occupy, the property in respect of which they were registered as electors for the said city, or to reside within the said city, or the limits prescribed by the said act, and thereby ceased to possess the title or qualification, whether as freemen, or other electors, in respect of which they had been registered; and others were disqualified by receiving of alms or parochial relief, or had become or became otherwise, and *were disqualified under the provisions of the different statutes made for securing the freedom of election*, and all such persons were nevertheless allowed to vote; and other persons who were not registered, and who were neither freemen, or, if freemen, did not reside within the said city, or the distance prescribed by the said act, nor *electors otherwise qualified or entitled to vote as electors of the said city* under the provisions of the said act, and who *respectively were not entitled to vote* at the said last election of members to serve in parliament for the said city; and many persons who *were disqualified and not entitled voters*, and whose votes are null and void, did nevertheless vote at the said election for the said Thomas Twisden Hodges; and by reason of the premises the said Thomas Twisden Hodges obtained an apparent and colourable majority of votes over the said Honourable Charles Wellesley, &c."

the 7 & 8 Geo. 4, c. 37, an objection to him on that account having been made to him in their list of objections.

Mr. Austin, in support of the objection.

The Committee is a Court of Justice sitting by virtue of a statute, with power to try the merits of the return and election; they must therefore proceed like any other Court to try the matter submitted to them *secundum allegata et probata*. Every Court, whether of equity or common law, requires the plaintiff, either in his bill or declaration, to shew to the defendant what charge he must be prepared to meet. Committees may probably have been less strict than other Courts in the enforcement of technical rules of pleading; but it has always been held as a rule of parliamentary law, that no evi-

dence should be received except in proof of some allegation in the petition. In this petition there is no allegation of persons disqualified, by having served as agents or flagmen to the sitting member, having voted in his favour, and no evidence can therefore be taken in support of an allegation which the petitioners have never made.

It will probably, however, be contended, that agents and flagmen fall under the description either of "persons disqualified under the provisions of the different statutes made for securing the freedom of election," or else "of persons disqualified and not entitled voters;" against both of which classes there are allegations in the petition.

Agents and flagmen cannot, however, fall under the description of persons "disqualified under the provisions of the different statutes made for securing the freedom of election." The only act in the statute book which expressly bears that title, is the 22 Geo. III. c. 41, which is intituled "An Act for the better securing the Freedom of Election of Members to serve in Parliament, by disabling certain officers employed in the collection or management of his Majesty's revenue from giving their votes at such elections." The allegation is, therefore, sufficient to admit of objections being entered into, and of evidence being given in support of objections to all persons who are disqualified under the provisions of that statute, or of the 41 Geo. III., which was passed at the Union to extend its provisions to the whole of the United Kingdom, for the proper method of describing a statute is by its title. Such an allegation, however, cannot be extended to embrace persons disqualified under the provisions of the statute of 7 & 8 Geo. IV. c. 37, which is intituled "An Act to make further Regulations for preventing corrupt Practices at Elections of Members to serve in Parliament, and for diminishing the Expense of such Elections;" for

there is nothing either in the title or even in the body of that statute to shew that it was passed for securing the freedom of elections. If, however, such an allegation is to be held to include persons disqualified under the 7 & 8 Geo. IV. it must be held to include all persons disqualified under the provisions of every other statute by which persons are rendered incapable of voting, such as the Splitting Act, 7 & 8 Will. III. c. 25; the Act against Contractors sitting in Parliament, 22 Geo. III. c. 45; the Bribery Act, 2 Geo. II. c. 24; the Act against Occasional Freemen, 3 Geo. III. c. 15; the Act against Occasional Freeholders, 3 Geo. III. c. 24; the Police Act, 10 Geo. IV. c. 44; and even under the Reform Act itself. All these acts were passed to prevent improper persons from voting at elections, but none of them bore the title prefixed to the 22 Geo. III. c. 41; because that act having been passed to prevent the interference of officers under the crown at elections, could alone, with propriety, be called an act to secure their freedom.

If however an allegation such as the present is to be held to extend to every disqualification under every act of parliament that creates one, no other allegation need ever be inserted in petitions; and thus the petition will give no information whatever to the party petitioned against of the charges intended to be brought against him or his voters.

The same argument will apply to the second allegation, that "*persons who were disqualified and not entitled voters*" voted. These words include every kind of objection that can be made to voters; and if the petitioner was suffered to give evidence of particular objections under so general an allegation, the sitting member would remain quite uninformed, until the list of objections were delivered, of the course about to be pursued by his opponents.

Although formerly Committees admitted great laxity

in the form of petitions, yet of late years many of them have adopted a stricter rule. Thus in the *Nottingham case* (*z*), where the petition was stated to be presented by "Rich. Reckless of Cheapside, in the city of London, hosier, and James Edenborough of Fore-street, in the *same* city, gentleman, who are electors and persons having a right to vote, and who did vote at the last election of members to serve for *the said town and county* in this present parliament," the Committee determined that the petition could not be received, because it did not appear by the petition itself that the petitioners were persons having a right to vote for the *town of Nottingham*, there being no place mentioned in the petition to which the *said town and county*, for which they stated they had a right to vote, could be referred to, except the *City of London*. The rules adopted by Committees are distinctly laid down by Mr. Rogers, on the Law and Practice of Election Committees. He says, p. 28, "Although it is sufficient if a petition be drawn in general terms, yet the thing complained of must be stated in the form of a complaint. Thus in the *Petersfield case* (*a*), where one of the sitting members, Sir A. Hume, was described in a petition as having been high sheriff of the County of Hampshire, but there was no express allegation or complaint in the petition of his not being eligible on that ground, the petitioner was not permitted to enter into evidence to prove him sheriff, in order upon that to frame an argument of his ineligibility as such." The *Carmarthen case* (*b*) and the *London case* (*c*), are also cited by Mr. Rogers to prove the same rule. In the *Sudbury case* (*d*), where the petitioners complained that the sitting members had been guilty of bribery, and that by means of these and other corrupt, undue, and illegal practices did influence and procure a majority of

(*z*) Cor. & Dan. 197.
(*a*) 3 Doug. 3.
(*b*) 1 Peck. 285.
(*c*) 2 Peck. 271.
(*d*) 2 Peck. 273, in notis.

votes, although the greatest parts of such votes were illegal and ought not to have been taken, the House refused to permit the petitioners to prove that many of the persons who voted for the sitting member were not legally entitled to vote. So also in the *Nairn case* (*e*) the petition alleged that the votes of three persons, namely, Sir Ludovick Grant, Capt. John Fraser, and Arthur Forbes, Esq. had been improperly admitted to vote, and concluded in these words: " And further, the return of the said (sitting member) was brought about by various illegal and unwarrantable acts and proceedings, and the petitioners therefore think themselves much aggrieved, and apprehend the said election and return is an undue election and return." The petitioners wished to object to the vote of Alex. Rose, whose name was not mentioned in the petition, but the Committee resolved that, under the particular circumstances of the petition, the counsel for the petitioners were not at liberty to enter upon the vote in question. In no case indeed, as it is observed by Mr. Rogers (*f*), except those of double returns, will a Committee receive evidence upon a charge not contained in a petition. In cases where double returns have been made by distinct returning officers, as soon as the Committee have decided who is the proper returning officer, the parties returned by him are placed in the situation of sitting members, and may indeed in that character attack the votes on their adversaries poll, although their petition to the House contained no allegation against them; as was done in the *Fowey* (*g*), *Downton* (*h*), and *Oakhampton* (*i*) *cases*. This apparent exception, however, is rather a confirmation of the rule previously stated by Mr. Rogers.

The great vice which has characterized the books on election petitions, has been the vagueness of the law

(*e*) 3 Lud. 405.
(*f*) p. 30.
(*g*) 1 Peck. 523.
(*h*) 3 Lud. 173.
(*i*) 1 Frazer, 69.

applied to them, arising from the loose proceedings of Committees. It is to be hoped that Committees will hereafter attempt to get rid of that vice; and, amongst other sound rules of the common law, that they will adopt that by which evidence is confined to allegations distinctly set forth in the petition.

Mr. Harrison, against the objection.

The authorities that have been cited cannot at all apply to a petition which has been presented since the passing of the Reform Act. Before that time, as is well known, the petitions in English cases contained no specification of objections against the electors objected to; they only contained a simple allegation that the returning officer had admitted the votes of divers persons who were not entitled to vote, and refused to receive the votes of divers persons who were entitled to vote. After the passing of the Reform Act more particularity was introduced, because it became necessary to attack the register as well as the poll. There is another very strong answer to the applicability of these cases, which is, that every one of them, except the *Nottingham case*, (which turned not on the sufficiency of the allegations of the petitioners, but of their own description of themselves,) was decided before the 53 Geo. III. c. 71, was passed, which first directed that lists of voters intended to be objected to should be given in by each party, in case of contested elections, before the day appointed for taking the petition into consideration. Since the passing of that act, which has been amended by the 9 Geo. IV. c. 22, every sitting member for a city in England has five clear days at least, before the case can be heard, full notice of every objection that can be urged by the petitioners. The purpose for which the delivery of these lists was required by act of parliament, was to prevent any mischief that might arise from want of specification in the petition; and to all practical purposes they give most full and ample warning to each

party of the objections that are intended to be taken by the other. If analogies are to be followed from the mode of proceeding at common law, the list of objections delivered by a petitioner certainly gives quite as much, if not more information to the party whose seat is attacked, than a bill of particulars by a plaintiff in an action of assumpsit to the defendant he sues.

An objection similar to the present has just been overruled in the *Droitwich case* (*k*). If, however, it is intended to argue that there are no other Acts passed to preserve the freedom of election besides the 22 Geo. III. because that only bears the title, it may be as well to examine the provisions of several others. In the Bribery Act, for instance, 2 Geo. II. c. 24, the preamble especially recites, " Whereas it is found by experience that the laws already in being have not been sufficient to prevent corrupt and illegal practices in the election of members to serve in parliament, for remedy thereof and to the end that all elections of members for parliament may hereafter be *freely* and indifferently made, without charge or expense." Surely any person incapacitated from voting under the provisions of this act might be termed a person incapacitated by a statute made for preserving the freedom of elections. What difference can there be whether the freedom of elections is violated by the reception of a number of voters, subjected to the undue influence of a private person or the undue influence of the crown? In modern times the former influence is perhaps the most to be guarded against. The 7 & 8 Geo. IV. is an act specially framed to protect the freedom of elections from the undue influence which a wealthy candidate may acquire over a large body of the poorer class of voters, by engaging them nominally in his service as agents, messengers, or flagmen, but in reality under that pretence purchasing their votes. It is in fact

(*k*) See *ante*, p. 44.

an act passed to carry out the full design of the Bribery Act, as is shewn by its preamble: "Whereas it is expedient to make further regulations for preventing corrupt practices at elections of members to serve in parliament, and for diminishing the expenses of such elections." Persons disqualified under this act must, therefore, equally with those disqualified by the Bribery Act, be considered as persons disqualified by a statute passed to protect the freedom of elections.

The decision of the Committee was, that they think the words of the petition, coupled with the lists, give sufficient information to the sitting member.

An objection may be made before a revising barrister to a voter on the ground of his being disqualified from voting as a custom house officer under the provisions of the act 22 Geo. 3, c. 41.

It was then proved that the voter had been a boatman in the service of the customs for twenty-two years, that he had been put on the superannuation list by the Treasury on the 24th of the preceding August, and that he was then in the receipt of a pension of 20*l.* a year, and it was conceded that he had held his situation in the customs under a commission. No objection had been made to him before the barrister.

Mr. Pollock, against the vote.

"No person, whether concerned or employed in the charging, collecting, levying, or managing the customs, or any part, or any branch or part thereof;" is, by the express enactment of the 22 Geo. III. c. 41, capable of giving his vote for the election of any member of parliament; and that statute further goes on to provide "that if any person hereby made incapable as aforesaid, shall nevertheless presume to give his vote during the time he shall hold, or within twelve calendar months after he shall cease to hold or execute any of the offices aforesaid, contrary to the true intent and meaning of this act, such votes so given shall be null and void to all intents and purposes whatsoever." The only ground, therefore, that this vote can be attempted to be supported on is, that the register is conclusive as to the validity of the votes of all persons whose names are

inserted in it, and who were not objected to before the barrister. Whatever may have been the determinations of former Committees as to the conclusiveness of the register, it never could have been their intention that it should be so in cases where the objection was of such a nature that it could not be taken before the barrister. Now an objection under the 22 Geo. III. could not be taken before the barrister, because the incapacity expressly relates to the time of giving the vote at the poll. The jurisdiction of the barrister only extends to see whether a person is entitled to vote on the 31st of the preceding July. How can he say whether a person will or will not be incapacitated to vote by the provisions of the 22 Geo. III. at some future day of the election? Supposing an objection had been made to the voter on the ground of being in the employ of the customs, and the barrister had struck him off, the effect would have been, that although perfectly entitled to vote from the 22d of August, 1835, when his year after quitting the customs would have expired, yet his name not being in the register he would be unable to exercise his franchise; but a case of a still greater hardship might be put. On the 31st of next July his twelvemonth from the time of quitting the customs will not have expired; he will, consequently, if an election happened on that day, be incapable of voting; but if an objection could be made to him before the barrister at the next registration, and the barrister had jurisdiction in the case, he must again be struck off the register, and could not be put on it again till the next year, or be capable of voting till the 2d of November, 1836. The effect of the registration under the Reform Act would therefore be to add a year and eleven days to the year of disfranchisement, which he was subjected to by the 22 Geo. III. This, however, could not be the true construction of the Reform Act, which does not mention, much less extend, the operation of the 22 Geo. III.

Those objections only can be taken before a barrister which it is possible for him to adjudicate upon; but it is impossible for him to adjudicate upon a question of time, to be calculated up to a period of which he cannot know the date.

Mr. Austin, in support of the vote.

The jurisdiction of the barrister is given by the 50th section of the Reform Act. By that section it is provided, that wherever an objection has been made to a claimant, and the objector, or some person in his behalf, appears in support of the objection, "every such barrister shall require it to be proved that the person so objected to was entitled, on the last day of July then next preceding, to have his name inserted in the list of voters for such city or borough in respect of the qualification described in such list; and in case the same shall not be proved to the satisfaction of such barrister, or in case it shall be proved that such person was then *incapacitated by any law or statute* from voting in the election of members to serve in parliament, such barrister shall expunge the name of such person from the said lists." This voter was incapacitated on the 31st of July. If an objection had been made against him before the barrister he must have been struck off. No objection was made to him, and the case cannot be entered into now without opening the register. The 22 Geo. III. and the Reform Act are possibly to a certain degree incompatible with each other, but if so the latter statute must prevail. It is remarkable indeed that the Reform Act repeals no act expressly, although the effect of it has been to repeal and alter enactments in many preceding statutes. By the 26 Geo. III. c. 100, for instance, residence of six months previous to the day of the election was required of all householders, and a very large body of other classes of voters, and yet the effect of the Reform Act has been to require the same period of residence up to the 31st of July, so that now all the classes of

voters included in the 26 Geo. III. must reside much more than six months before the day of election. The Committee can only proceed according to the strict words of the statute, and are not at liberty to take into their consideration cases of hardship. No one would contend that a man who had held a 10*l.* house for 364 days only before the 31st of July was entitled to be registered; and yet it would be undoubtedly hard upon him to be without a vote until a twelvemonth after the next 2d of November from that time.

The Committee decided that an objection to George Wilkinson, as a custom-house officer, might have been taken before the revising barrister, and disposed of by him.

Mr. Austin, in support of the vote.

Then if the objection now intended to be urged against the voter could have been taken before the barrister, the Committee cannot enter upon the consideration of it, unless they determine at the same time that they will enter generally upon the consideration of all the votes upon the register. What difference is there between an incapacity to be registered, arising from the non-payment of rates and taxes, and one arising from holding a situation in the customs? If the parties are not to be precluded from objecting before the Committee to voters on the latter ground, why should they not be permitted to avail themselves of the former? If a man is registered in respect of a house worth only 9*l.* a year, the want of value of his house would be a disqualification; but if no objection was taken to him before the barrister, he would retain the right to vote; and unless he lost the qualification for which his name was inserted in the register, although his house was not at all increased in value when he voted, his vote could not, according to the decided cases, be disputed before a Committee. In the same way the incapacity arises here from the commission held by the voter under the customs.

The objection that a voter has been employed in the customs within 12 months of the election, may be taken before a Committee, and if proved the voter may be struck off the poll, although no objection was made to him before the revising barrister.

He obtained no new commission, and incurred no additional incapacity after the 31st of July.

The Chairman.—Does the acceptance of the superannuation pension in August impose any additional disqualification?

Mr. Austin.—No, the disqualification arises from his having held the commission; and the being put on the superannuation list only limits the time at which the disqualification is to cease. The case is clearly distinguishable from that of a pauper, where every successive act of relief is a fresh cause of disqualification. Unless therefore the Committee determine to open the register in every case, they must refuse to do so in the present, and they cannot permit a disqualification not incurred after the 31st of July to be discussed before them.

Mr. Pollock, against the vote.

Whether this vote was objected to before the barrister or not, the disqualification to him is a continuous one; he continued a custom-house officer after the 31st of July, and every act which he did in that character is a fresh act creating a new disqualification. This case does not differ from that of a pauper before the registration, who continues a pauper afterwards, and therefore comes within the rule adopted by all the Committees. The Reform Act was not intended to repeal all the statutes imposing disqualifications, and it therefore neither confers nor preserves a franchise, without at the same time providing that the individual of the class it is legislating upon shall not be personally disqualified. Thus in the 27th section, the franchise is only given to every male person of full age and *not subject to any legal incapacity*, who shall occupy a 10*l.* house, &c. In the same way in the 33d section it is provided, that "every person who *would have been entitled* to vote &c. as a burgess or freeman, or in the City of London as a freeman or liveryman, *if this act had not been*

passed, shall be entitled to vote," &c. The man, therefore, who before the Reform Act could not have voted on account of any personal incapacity, has not acquired from it any power of doing so now; for the provisions that a 10*l.* householder should not be subject to a legal incapacity, and that the freeman should be entitled to vote who would have been so entitled if the act had not been passed, are attached to the right of voting conferred or reserved, and not to the conditions required previously to registration.

The Committee determined that George Wilkinson having been a custom-house officer within twelve months of the time of the election, his vote is bad.

Stephen Cruttenden's case.

A change by a 10*l.* householder from the occupation of one 10*l.* house to that of another of similar value after the 31st of July, disqualifies him from voting until a new register is in force.

The voter had quitted the occupation of the Falstaff public house in Troy Town, Rochester, for which he was registered as a £10 householder, on the 24th of September 1834, and had removed to another house in the same city of more than £10 yearly value, for which he had been rated and paid rates.

Mr. Pollock against the vote.

The voter has quitted the occupation of the house in respect of which his name was inserted in the register; he had not, therefore, the same qualification at the time that he voted as that for which his name was originally inserted in the register; he consequently could not truly have answered the 3rd question allowed by the Reform Act, had it been put to him at the poll; and his vote must be considered as bad. The exact point has not yet been determined by any Committee, but it rests upon the meaning of the words *same qualification* in the 3rd question, which must, however, according to their true interpretation, mean the occupation of the house or premises described in the register. It is true that a qualification may be gained under the 28th section of the Reform Act by the occupation of different premises

in immediate succession, but such an occupation must be previous to the last day of July in each year, before the register is made. If, indeed, a person were allowed to vote for the occupation of any other property than that for which he was registered, the anomaly would happen, that whilst a man might be obliged to prove in the strictest mode before the revising barrister the value of any premises he might occupy before the 31st of July, in order to get his name on the register, yet when it was once on, his own opinion of the value of any premises he might occupy subsequently to the 31st of July, was to be conclusive as to his right to vote, for the returning officer had no power of inquiry after the man had answered the 3rd question.

Mr. Austin in support of the vote.

This point was raised in the *Southampton case*, but there was no express determination upon it. It turns wholly upon the construction of the word "qualification." The true meaning of this word is not the occupation of any particular house worth £10, but the occupation of some house of that value within the borough. If it were the occupation of a particular house, it could not be acquired by the occupation of a succession of houses; but the 28th section directs that "the premises, in respect of the occupation of which any person shall be entitled to be registered in any year, and to vote in the election for any city or borough as aforesaid, shall not be required to be the same premises, but may be different premises occupied in immediate succession by such person during the twelve calendar months next previous to the last day of July in such year." Thus we have a clear definition, by the legislature, of the meaning of the word *qualification*, as signifying the continuous occupation of *any* house or houses of the yearly value of £10, not of any particular house at any particular time. It is true that the occupation of the premises in succession is, in that section, confined to the

period of twelve calendar months before the 31st of July, because a period must be fixed for the revising barrister's inquiry; but the question is not as to the mere enactments of that section, but as to the meaning of the words employed in it. If at any time, in the act, *qualification* signifies the continuous occupation of any house or houses, and not the occupation of a particular house, it must be held to retain throughout the act the same signification, unless there is something in the immediate context to point out that it is used in a less extended sense than usual. Now there is nothing in the third question which at all leads to that conclusion. The form of it, as given in the Reform Act, is, "Have you the same qualification for which your name was originally inserted in the register of voters now in force for the county of &c. (or for the county, riding, &c., or for the city, &c., as the case may be, specifying in each case the particulars of the qualification as described in the register?) The word *same* does not refer in any way to the word premises, which does not occur in the sentence, but to the word *qualification*, which must mean, as throughout the act, the possession of one or more 10*l.* house or houses in succession. Supposing the question to be put to the voter in the present case, he would be asked whether he possessed the same qualification for which his name was originally inserted in the register now in force for the city of Rochester," and then the particulars of his qualification as described in his register must be stated to him. Now what would be those particulars? Upon reference to the list of 10*l.* householders for his parish in the register, according to the form, Schedule I. No. 1. under the head "Nature of qualification" will be found "House." This qualification, a "House," and of the requisite value too, he would still retain, and therefore he could properly answer the question in the affirmative. If, as is supposed on the other side, besides the nature of the qualification in the

second column, the situation of the last premises which he occupied before the 31st of July, as described in the third column of that list, under the head of "Street, lane, or other place in this parish, where the property is situate," ought also to be stated to him, and unless he could answer that he possessed the same qualification, that is, a "house" in the same situation, that is "Troy Town," he is not to be suffered to vote; this absurdity would follow, that as there is no provision in the act that the number of the street or lane should be mentioned in the list, and in fact it never is mentioned, that a man might move from No. 1 to No. 20 in the same street after the 31st of July, answer the 3rd question in the affirmative and retain his right of voting, whilst the unfortunate voter who chose to remove round a corner into the next street would be deprived of his franchise for the remainder of the current year, and until the 2nd of November in the succeeding year.

The Committee determined the vote to be bad.

March 24. Change of occupation after the 31st of July from one house to another in the same street incapacitates a 10*l.* householder from voting, although the description of his qualification in the register would equally suit both the houses.

Richard Gates's case.

In this case the voter was registered for a house in Green Lane, Rochester. He was owner of two houses in Green Lane next door to one another. In June, 1834, the voter lived in one, and a tenant to him of the name of Colley in the other. Ten days after Midsummer-day Colley quitted the house he lived in and gave up the key to the voter, who in the course of the month of July sent in some furniture and coals with the intention of occupying it himself, and his family occasionally took their meals there and were employed in getting the house ready for their coming into it. They did not, however, actually go to reside there till the 29th of September, when the voter let his former house to another person. It was deposed that he had proposed to go into the house formerly Colley's much earlier, but

was prevented by the unexpected confinement of his wife on the 28th of August.

Mr. Pollock in support of the vote.

Supposing that the second house had been in another street there was sufficient occupation of it before the 31st of July by the voter to have authorized the overseers, under the 28th section of the Reform Act, to have put him on the list in respect of it, coupled with his occupation of the preceding one. The circumstance of the premises being in the same lane, so that it could not be discovered from the list for which premises he was inserted in it, ought not to prejudice him, because every presumption ought to be made in favour of the voter.

Mr. Austin against the vote.

The acts done were not sufficient to constitute such an occupation as was required for the purposes of the act, but the real question is, for which of the two houses was the voter registered, since he could not be registered for both. There was no dispute but that he occupied the first house on the 31st of July, and that he was entitled to be inserted in the lists in respect of it. If, however, he was entitled to be registered for the second house, it must have been in respect of his occupation of it during the month of July, coupled with his occupation of the first house for the preceding eleven months. But he never left the occupation of the first house during the month of July, consequently there was not the occupation of different premises in *immediate succession*, which was provided for by the 28th section, but the occupation at the same time of two different houses. If the overseers had inserted his name in the lists for the second house, and he had changed his mind, as he was perfectly at liberty to have done, and remained in the first house, he must equally have lost his vote. It must be, however, presumed that the overseers did their duty, and inserted his name in the list in respect of the first house, as they ought to have done.

The Committee determined this vote to be bad. The Chairman informed the Counsel that the ground of their decision was, that they thought a change of occupation since the 31st of July had been proved.

Robert Norman's case.

March 23. The vote of a man whose wife received parochial relief, and who was convicted under the Vagrant Act for not maintaining her, but who appealed from that conviction to the quarter sessions, and on their affirmance of it repaid the parish the amount of relief they had given: Held, a good vote, although re-payment was not made till after the election.

In this case the voter's wife had received pecuniary relief from a parish, which afterwards applied to the voter for re-payment; he refused it, and the parish officers then took him before a magistrate, by whom he was convicted under the Vagrant Act (*l*) for not supporting his family, and sentenced to a fortnight's imprisonment and hard labour. The voter then appealed from this conviction to Rochester City quarter sessions, and supported his appeal by counsel, on the ground that he was not liable for his wife's maintenance whilst she was living in adultery with another man (*m*). At the quarter sessions, which were held immediately before the election, the conviction of the magistrates was confirmed, and a compromise was immediately entered into between the parish and the voter, that the conviction should not be enforced, and that he should, within a month, repay the parish the money they had given his wife and all their expenses. He accordingly repaid the money and expenses, but not till after he had voted at the election.

Mr. Joy against the vote.

The relief to the voter's wife was relief to himself. Committees have always held that relief to any part of a voter's family incapacitates him from voting; *Hedge's case* (*n*). The fact of the voter's having been convicted under the Vagrant Act, and having done every thing in his power to avoid supporting his wife, is an act of moral misconduct which can give him no title to vote. The only question for the Committee to determine is, whether he had not by his wife received parochial relief within a

(*l*) 5 Geo. IV. c. 83, s. 3. Ad. 227.
(*m*) See *Rex* v. *Flinton*, 1 B. & (*n*) P. & K. 130.

twelvemonth of the day on which he voted. If he had done so his vote was bad at the time it was given; it cannot be cured by any subsequent re-payment to the parish, and it must be struck off the poll.

Mr. Pollock in support of the vote.

The voter never was a pauper, he never received relief himself, or suffered any one whom he conceived to be legally part of his family to receive it. He disputed his liability on account of a person whom he conceived did not form part of his family, and repaid whatever the parish had advanced when it was determined by a competent tribunal that he was legally liable for her maintenance. It cannot be contended that he received relief when he has actually repaid every farthing that the parish had paid, and by the terms of the compromise the sum advanced had become a debt from him to the parish at the time he voted.

The Committee determined the vote to be good.

William Woods' case.

March 24.

Under general allegations in a petition that persons who were "not registered," and others "who were not freemen, or if freemen did not reside within the city or the distance prescribed by the Act, or electors otherwise qualified of the said city under the provisions of the Re-

The objections to this person, who had voted as a freeman, were, that he was not registered, and had personated the William Woods, the freeman who was entitled to vote.

Mr. Austin objected to going into this case on the ground that there was no allegation in the petition that persons had voted who had personated voters.

Mr. Pollock, contrà, insisted that the allegation in the petition, that "other persons who were not registered and who were neither freemen, or, if freemen, did not reside within the said city or the distance prescribed by the said act, or electors otherwise qualified or entitled of the said city under the provisions of the said act, and who respectively were not entitled to vote at the said last election of members to serve in parliament for the said city, and many persons who were disqualified

form Act, who were not entitled to vote," did vote, an objection of personation against a vote allowed to be proved.

and not entitled voters, and whose votes are null and void, did nevertheless vote at the said election for the said T. T. Hodges," was quite sufficient when taken in conjunction with the specific objection made in the list of objections, to enable the petitioners to proceed with evidence of personation in this case.

The Committee overruled the objection.

Where there are two freemen of the same name, and only one registered, the evidence of the town clerk who made the lists of freemen received to show which he intended to put on. See next case.

Evidence was then given that there were two William Woods freemen of Rochester, one a brewer residing at Strood within the city, the other a dredgerman residing at Milton, about eleven miles from it. The " place of abode" of the William Woods on the register was stated to be " Strood," and the town clerk, who made out the list, deposed that he intended to have inserted the brewer. The dredgerman voted, and when the brewer came up for the purpose of voting he was told that a William Woods had voted, and went away from the polling booth without having tendered his vote.

Mr. Pollock, against the vote,

Contended on the facts that the dredgerman had personated the brewer, who was the person entitled to vote, and distinguished the case from *Chowne's case* (*o*), because there only one Chowne was in existence, and as he was on the register and not been objected to before the barrister, the Committee refused to inquire whether his name was wrongfully inserted in it or not. Here there were two William Woods, and it was proved that the right one was on the register.

Mr. Austin in support of the vote.

The case cannot be distinguished from *Chowne's case*, and the acknowledgment of the brewer by not tendering his vote so as to have it put on the poll, is conclusive against his right.

The Committee determined the vote to be bad.

(*o*) P. & K. 141.

William Terry's case.

There were two freemen of the name of Terry, one the father with the christian name of William, who held an office in the customs, the other the son with that of William John, who was not admitted to his freedom till the 20th of August, 1832. The name of "William Terry" was on the register. William John Terry voted. The town clerk gave evidence that it was William Terry the father whom he had put on the list.

Same point as in preceding case.

Mr. Pollock against the vote.

Mr. Chandless, in support of it,

Contended that as Committees did not allow mistakes in the name of the voter (*p*) to prejudice his right to vote, the voter might well suppose, when he saw the name of William Terry on the register, that he was the person intended and not his father, whom he knew to be disqualified. It would be most dangerous if the evidence of the town clerk as to whom he had intended to put upon the lists was to be conclusive, for it would, in fact, give to him the determination of who was the person entitled to vote—a question which ought to be decided by the register alone (*q*).

William Moore's case.

The objections to this voter were, "that he was not registered, and that he had personated another person of the same name who was upon the register." It appeared that the name of William Moore occurred three times on the register. Twice on the freemen's list, viz. No. 328, William Moore, St. Nicholas, freeman; No. 330, William Moore, junior, St. Nicholas, freeman; and once on the list of 10*l.* householders for the parish of St. Nicholas, viz. No. 658, William Moore, house and pre-

The evidence of the town clerk as to the persons he puts on the freemen's lists not conclusive as to person on the register.

(*p*) See *Morris* and *Turner's cases*, *New Sarum*, P. & K. 261.

(*q*) See the *Southampton case*, P. & K. 221; and Mr. Rogers's remarks on it in his Law and Practice of Elections, 3d edit. p. 28.

mises, High-street. The town clerk deposed, that the William Moore, No. 658, was the same person as he had put on the freemen's list as No. 328, and that the William Moore, junior, No. 330, was his son, and that although there were two other freemen of the names of William Moore he had not put them on the list, and knew nothing about them. Both the William Moores, Nos. 658 and 330 voted, and a third William Moore voted also, who was a freeman and belonged to a barge, and when at Rochester slept generally at a public-house in the parish of St. Nicholas. It was also proved that this third William Moore had gone to look at the list of freemen when exposed at the Town-hall, in order to see whether his name was inserted in it, and that having seen the name of "William Moore, St. Nicholas," he expressed himself satisfied that he was on the list.

Mr. Joy in support of the vote.

Mr. Pollock against the vote.

The Committee determined the vote to be good.

Richard Prawl's case (*r*).

March 26. A voter cannot be called as a witness in support of his own vote.

The objection to this voter, a solicitor, was, that he was a paid agent of the sitting member, and a primâ facie case of having acted as an agent was made out against him, and some admission by himself that he had been paid was also deposed to. It was then proposed to call the voter to prove that he had not been paid, and had received no promise of payment.

Mr. Pollock against the admission of the evidence.

A voter cannot be called to substantiate his own vote. This is stated by Mr. Rogers (*s*) to be the better opinion, and it is fully borne out by the cases of *Great Grimsby* (*t*) and *Middlesex* (*u*), which he cites in support

(*r*) The reporters are obliged to their friend Mr. Sanders for the notes of this and the following cases.

(*s*) Law and Practice of Elections, vol. ii. p. 161.

(*t*) 1 Peck. 76.

(*u*) 2 Peck. 133.

of it. It is now well established in every day's practice that a man may be called to cut down his own vote but not to support it.

Mr. Austin for the admission of the evidence.

It is certainly laid down as a principle in some books on election law, that a man cannot be called to support his own vote, but this rule has no solid foundation, for a voter has no legal interest in the result of an election petition. Before the Reform Act it seems, however, to have been considered as an established practice that the voter could not be called in support of his vote. That act, however, had made the evidence of the voter receivable before the barrister, and consequently it is now receivable before Committees, *Humby's case* (*v*). The evidence of voters who were charged with having been bribed was always received by Committees, even before the Reform Act, to disprove the alleged bribery, although their evidence tended to exculpate themselves, as in the *Ivelchester case* (*x*), and to support their vote, *Worcester case* (*y*). In the recent case of *Chester* (*z*), Mr. Fletcher, who was charged with being one of the principal agents of the sitting members in carrying on a system of treating, was permitted to disprove his alleged agency. Here the voter himself is the only person who can give decisive evidence on the subject, and it is to be hoped that the Committee will receive it.

Mr. Pollock in reply.

The current of authorities since the *Great Grimsby case* in 1802, has been decidedly opposed to the argument on the other side. The *Ivelchester* and *Worcester cases* therefore, so far as they relate to the question, may be considered as overruled. In the *Chester case*, Mr. Fletcher was called not to support his vote, which was not questioned, but to disprove his agency. The decision of the *New Sarum* Committee in *Humby's case* proceeded

(*v*) *New Sarum case*, P. & K. 253.
(*x*) 3 Doug. 165, *Gillat's case*.
(*y*) 3 Doug. 272.
(*z*) Cor. & Dan. 69.

upon the principle that as they were sitting as a Court of Appeal from the decisions of the revising barrister, they ought to have the same evidence as he had; and in the subsequent case of *Isaac Young* (*a*), they intimated their opinion that the voter could only be examined as to those facts which might have been established before the revising barrister. Now the objection of agency to a candidate could not be taken before a revising barrister; it is an objection for a Committee solely, not sitting as a Court of Appeal from the decision of a barrister, who, from his having no power to enforce the attendance of witnesses, was obliged to be content with the testimony of the voter himself, but as a Court of original jurisdiction, with full power to call before them all witnesses that might be necessary, and which therefore ought not to receive the very worst evidence which could be tendered, that of the party himself. It is against all precedent indeed to say that the voter is not a party when his vote is in question, he always has been considered so, and is so in fact.

The Committee decided that they would not examine Mr. Prawl as a witness as to his own vote, the adverse party objecting to it; and the chairman also informed the counsel that the Committee would have come to the same conclusion on Reynolds's (*b*) votes the preceding day had his evidence been objected to.

Mr. Prawl was then formally tendered as a witness and objected to, upon which other witnesses were called to prove that he had received no promise of payment, and that he had acted without remuneration.

The Committee determined the vote to be good.

(*a*) P. & K. 254.

(*b*) This was a case in which a vote had been entered on the poll-book for Bernal and Wellesley. It was contended that this was a mistake, and that the entry ought to have been for Hodges and Wellesley. After several witnesses had been examined, the voter himself was called by Mr. Pollock, and at the intimation of the Committee the objections to his testimony were waived by Mr. Austin. He proved that he had voted for Hodges and Wellesley.

William Collins's case.

Mr. Pollock proposed to prove that the voter received relief under a name by which he was not known; that an overseer would prove that he had given relief to the voter under the name of William Benfield, the relief tickets being always made out and entries in the parish relief book in that name, and that the relief was given him on the 24th and 29th of January, and the 4th, 11th and 17th of February, and on the 17th of April, 1834; that he (the overseer) had known the voter for several years past by the name of William Benfield, and until since the election had never known him by any other; that Mr. Patten, the solicitor, of Rochester, who had served all the notices of objection which were delivered on the side of the party who supported Lord Charles Wellesley, inquired of the overseer, at the time of the publication of the lists in 1834, whether William Collins was disqualified from having received parochial relief, and that the overseer not knowing him under that name, told Mr. Patten that William Collins was not disqualified, and that, consequently, no objection was made to him before the barrister.

The circumstance of an objection which existed before the 31st of July, not being known until after the election, does not enable a Committee to enter upon it, as it was not taken before the revising barrister.

Mr. Joy stated that he was ready to disprove these statements.

The Committee resolved that all the transactions mentioned by Mr. Pollock referred to matters anterior to the registration of the votes, and the objection not having been taken before the barrister as to the vote in question, the Committee would not take cognizance of them, and therefore could not give an opinion as to their truth or falsehood.

John Lock's case.

March 27.

The voter in this case had been omitted from the list of 10*l.* householders by the overseers. He sent in a claim and attended before the barrister. No opposition whatever was made by any one to his claim, and the barrister, after examining the overseer as to the facts of

When no objection has been made to a claimant in a borough

before the revising barrister, a Committee will not examine into the validity of his claim.

his case, inserted his name in the list. The objections made against him before the Committee were, that he had not been rated and paid rates for twelve months previously to the 31st of July 1834, and it was proposed to prove these facts, but an objection was made by the petitioners to the reception of this evidence.

Mr. Austin.

This case comes within the rule that has been adopted by the present as well as all other Committees that have sat since the Reform Act, that they will not enter into the discussion of cases where no objection has been made before the revising barrister.

By the provisions of the Reform Act, the overseers are directed to make out lists of all persons entitled to vote in respect of the occupation of houses of the annual value of more than 10*l.* within their parish; all persons omitted from those lists may send in claims to the overseers to be inserted therein; all persons upon those lists may object to any other person in them, and may send a notice of their objection to the overseer. If an objection is made and notice sent to the overseer, the duty of the overseer is then to insert the name of the party objected to in a list which is to be fixed up on the church doors for two Sundays, and thus serves as a notice to the party objected to. The objector must afterwards attend before the revising barrister and urge his objection. The provisions in the 50th section, with respect to this part of the barrister's duty, are "that he shall also retain on the said lists the name of every person who shall have been objected to by any person, unless the party so objecting shall appear by himself or by some one on his behalf in support of such objection; and where the name of any person inserted in the list of voters for such city or borough shall have been objected to in the manner hereinbefore mentioned, and the person so objecting shall appear by himself, or by some one on his behalf, in support of such objection, every such bar-

rister shall require it to be proved that the person so objected to was entitled on the last day of July then next preceding to have his name inserted in the list of voters for such city or borough, in respect of the qualification described in such list; and in case the same shall not be proved to the satisfaction of such barrister, or in case it shall be proved that such person was then incapacitated by any law or statute from voting in the election of members to serve in parliament, such barrister shall expunge the name of every such person from the said lists." Thus, in all cases of objections the barrister sits as a judge between two parties, the one supporting his title to be inserted in the lists, the other opposing it, in order to decide whether that title has been proved or not. If the decisions of the barrister in such a case is not satisfactory, it is in the power of any party to an election petition to appeal from it to a Committee, because by the 60th section it is provided "that upon petition to the House of Commons complaining of an undue election or return of any member or members to serve in parliament, any petitioner, or any person defending such election or return, shall be at liberty to impeach the correctness of the register of the voters in force at the time of such election, by proving that in consequence of the decision of the barrister, who shall have revised the lists of the voters from which such register shall have been formed, the name of any person who voted at such election was improperly inserted or retained in such register, or the name of any person who tendered his vote at such election, improperly omitted from such register." This last section, it is now completely settled by the unanimous decision of all the Committees before whom it has been considered, has the effect of confining the jurisdiction of Committees to those cases in which the barrister has made a decision. Unless therefore an objection has not only been made, but the objector has appeared and supported his objection before

the barrister, the right of no man to be inserted in the register can be questioned by a Committee.

With regard to claims, the provisions of the act require that they should be sent in to the overseers, that the overseers should include the names of all claimants in a list, and should cause that list to be exposed on the church doors for the same two Sundays as the list of persons objected to. Thus equal notice of a claim is given to any person who may wish to object to a claimant, as is given of an objection to a person whose name is objected to. The purpose indeed for which the list of claimants is directed to be published, can only be to give due notice of the claims, in order that they may be objected to before the barrister. The duties of the barrister, with respect to claimants, are pointed out by the 50th section, in these terms: "every such barrister shall insert in such lists the name of every person who shall be proved to his satisfaction to have been entitled, on the last day of July then next preceding, to have his name inserted in any such list of voters for such city or borough." If, therefore, any one wishes to oppose the insertion of the name of any claimant in the list, he must attend before the barrister and urge his objection to the claimant, when his case is called on; and, as the claimant is obliged to prove his title in the same way as the person whose name is in the lists, but who is objected to, the objector to a claim stands exactly in the same situation before the barrister as any other objector. There is, consequently, just the same room for objection to claimants as to persons whose names are inserted in the list; and if an objection to a claim is made and urged before a barrister, the barrister must make a decision upon it, and from his decision an appeal lies to a Committee of the House of Commons, under the provisions of the 60th section. If no objection however is made to a claim, there will be no decision of the barrister in the case, and consequently

no appeal to a Committee; for the word "decision," as used in the 60th section, implies that there must have been a contest on the case, that an objection had been taken and discussed, and a determination made by the barrister between the claimant and objector, the two parties to that contest.

An appeal would no more lie from a mere insertion by the barrister of the name of an unopposed claimant in the list, than it would from his insertion of the Christian name, or place of abode, or nature of qualification, or local description of the property of any person whose name is included in the list. All these particulars are required, by the act, to be inserted in different lists; and according to the provisions of the 50th section, "if they shall be wholly omitted from such list, in any case where the same are by this act directed to be specified therein, such barrister shall expunge the name of every such person from such list, unless the matter or matters so omitted be supplied to the satisfaction of such barrister before he shall have completed the revision of such list, in which case he shall then and there insert the name in such list. If the voter's name had been originally inserted in such list, but his qualification had been imperfectly described, he must have satisfied the barrister as to the nature of his qualification, and yet no one would contend that the insertion by the barrister of that qualification would give jurisdiction to a Committee. In the present case the voter's name, as well as his qualification, had been omitted, and he was consequently obliged to satisfy the barrister as to his qualification just in the same way as if that only had been omitted; but there was no objection to him, and no discussion, and consequently no judicial decision of the barrister *pendente lite.*

It is true that the barrister must have exercised his judgment as to whether the qualification was proved, but such an exercise of the judgment would not con-

stitute a judicial decision, such as would give a right of appeal under the 60th section. "It is taking the definition too large," says Lord Mansfield in, *Medhurst* v. *Waite*(c), "to say 'That every act where the judgment is at all exercised, is a judicial act.' A judicial act is supposed to be done *pendente lite* (of some sort or other)." Here there was no *lis pendens*—no judicial decision—and consequently the Committee has no jurisdiction in the case.

The Committee inquired whether Mr. Austin meant that the barrister, in inserting the name of a claimant in the list, does a merely ministerial act.

Mr. Austin.—I say it is not a judicial act.

Mr. Pollock.

No case has occurred since the passing of the Reform Act in which this point has been decided; for although in *Harper's case*(d) the voter had been a claimant, and had been inserted in the lists by the barrister, yet the objection taken to him was for a disqualification incurred by him subsequently to the barrister's signing the list. The Committee are therefore called upon to decide this case from their own construction of the Reform Act, unassisted by the determinations of prior Committees.

It is clear that the legislature intended that there should be an appeal from some decisions of the barristers in claims at any rate, for the 60th section provides that the register may be impeached, by proving that in consequence of the decision of the barrister who shall have revised the lists of voters from which such register shall have been formed, the name of any person who voted at such election was improperly inserted or retained in such register. The persons who may be shewn to have been improperly inserted must have been claimants; those improperly retained must have been originally

(c) 3 Bur. 1262. (d) *Bedford case*, P. & K. 142.

inserted in the list and objected to. Between these two classes, those originally inserted in the lists and those omitted from them, and consequently obliged to claim before the barrister, a wide distinction is drawn throughout the act; for it gives no one the power of objecting to a claimant; but its provision as to those who are to have the power of objecting to persons in the list are most precise. The objector whom the act recognizes must be a person whose own name must be on the list; he must deliver a notice of objection in a particular form, the slightest variation from which is fatal, to the overseers if the vote he wishes to dispute is for a borough, to the voter and the overseers if it is included in a list for a county. But what is the qualification required of, or what is the form of notice necessary to be delivered by the objector before a barrister to a claimant in a city? If, therefore, there is nothing in the act which even directs how an objection is to be made to such a claimant, it surely cannot be implied that it is necessary for one to have been made in order to give jurisdiction to a Committee.

All that is required in order to give jurisdiction to a Committee in cases of claimants, according to the provisions of the 60th section, is, that they should have been inserted in the register in consequence of the decision of the barrister. If we, however, look back to the provisions of the 50th section, we shall find that it is not competent to the barrister to have inserted the name of any person in a list without having previously come to a decision upon every point which constitutes that person's title to be inserted in the list; for it directs "that every such barrister shall insert in such lists the name of every person who shall be proved to his satisfaction to have been entitled, on the last day of June then next preceding, to have his name inserted in such list of voters for such city or borough." The barrister therefore must, in every case, decide whether the claimant is or not

proved to have been entitled to have his name inserted in the list. It makes no difference whether any one appears to oppose the claimant or not, the barrister is obliged to require that the qualification be made out, and to decide whether it is so satisfactorily made as to entitle him to insert the name in the list.

If the Committee should, however, deem it necessary that some person should appear before the barrister to object to a claimant in order to give them jurisdiction, it must be remembered that the overseer, who is bound to attend before the barrister, and who consequently is liable to be called upon to explain the reason why the claimant's name is omitted from the list, may, for the purpose of enabling the Committee to hold the decision of the barrister to insert the claimant as a judicial decision, be considered as an objector. The omission of the name of the claimant from the lists is in fact an objection by the overseer of a town. When the two parties come therefore before the barrister, the claimant supports his claim to have his name inserted in the list, the overseer his omission of it from the list; and between these two parties the barrister decides the question at issue, by either inserting the name or refusing to do so. There is quite sufficient *lis pendens* to render the judgment of the barrister, on a question of this kind, a judicial act.

Whatever differences, however, may exist upon the question whether the overseers are to be held as objectors to claimants or not, it is clear that the barrister is, in order to be judicially satisfied, obliged to have the whole title of the claimant proved. In the present case he must have decided that the claim was proved. We say that his decision was erroneous, and, according to the words of the 60th section, we submit that we are at liberty to impeach the correctness of the register, by showing that in consequence of that decision the name of the voter was improperly inserted in it.

Mr. Austin in reply.

The two propositions on the other side, 1st, that no objection can be made to a claimant; and 2dly, that the omission by the overseer operates as an objection, are inconsistent with each other.

There is no distinction between the case of claimants who are not objected to and persons actually upon the list in a similar situation. Will the Committee decide that they have authority to review the determination of a barrister, made without discussion, to insert the name of a voter in the list, when it is conceded that they have no authority to review the decisions of overseers in inserting in the list, without the power of discussion, the name of every voter who was not objected to? The objects meant to be obtained by means of the register would be easily evaded if all the cases of claimants are to be considered as open to discussion before Committees; overseers might purposely omit parties in order that they might be liable to be attacked after the election, and if this were done to any extent, the register would be merely illusory. The legislature has, however, provided that the register is only to be questioned in cases where there has been a decision of the barrister; a decision can only be made judicially by the barrister upon hearing both parties on the merits and objections; the insertion, on the list, of the name of a voter to whom no objection is made is a mere ministerial act (for that term implies a certain exercise of judgment, though not a judicial one,) but no decision; and this Committee, it is to be trusted, will determine the last point now remaining to be determined as to the appellate jurisdiction of Committees, by refusing to hear a case in which no decision has been made by the barrister.

The Committee resolved, that the overseer having stated that no objection was made before the barrister, the Committee decide that they are precluded from further examination.

Mr. Pollock then abandoned the case for the petitioners.

The Committee came to the usual resolutions, that Mr. Hodges was duly elected and ought to have been returned, and that neither the petition nor the opposition to it were frivolous or vexatious; and they reported to the House that they had altered the poll by striking off William Wyles, &c. twenty names.

CASE VI.

CITY OF CANTERBURY.

The Committee were appointed on the 24th March, 1835, and consisted of the following gentlemen:

Dugdale Stratford Dugdale, Esq. M. P. for North Warwickshire.—*(Chairman.)*

Sir Chas. Broke Vere, Bart. M. P. for East Suffolk.
Sir Charles C. Coote, Bart. M. P. for Queen's County.
Hon. James Hope, M. P. for Linlithgowshire.
Henry Hanmer, Esq. M. P. for Aylesbury.
Thomas Duffield, Esq. M. P. for Abingdon.
Glynn Earle Welby, Esq. M. P. for Grantham.
Henry Bingham Baring, Esq. M. P. for Marlborough.
Henry Jeffreys Winnington, Esq. M. P. for West Worcestershire.
William Sharman Crawford, Esq. M. P. for Dundalk.
John Henry Lowther, Esq. M. P. for York City.

Petitioner:—The Right Hon. Stephen Rumbold Lushington.
Sitting Member petitioned against:—Frederick Villiers, Esq.
Counsel for the Petitioner:—Mr. Harrison, Mr. Serjt. Merewether, and the Hon. John Talbot.
Agents:—Messrs. Williams, Brooks, Powell, and Broderip.
Counsel for Mr. Villiers:—Mr. Serjt. Heath, Mr. Austin, and Mr. Cockburn.
Agent:—Mr. J. Parkes.

THE petition, after stating the names of the candidates at the election, and that a poll was demanded by Lord Albert Conyngham, and granted by the sheriff, went on to state that the sheriff appointed three places for taking the poll, viz. the Guildhall, where he himself presided, with his assessor, and that he appointed

John Nutt, the town clerk, as one of his deputies to take the poll at one of the other booths; and John James Pierce, a solicitor, as another of his deputies to take the poll at the third booth. The petition then alleged that the said John Nutt and John James Pierce acted as such deputies with gross partiality in taking the poll at their respective booths, for the purpose of forwarding the interest of the said Frederick Villiers, to the injury of the petitioner: that the said sheriff, and more particularly his said deputies John Nutt and John James Pierce, acted most illegally and in violation of the freedom of election, by rejecting and refusing to receive, upon the most frivolous and contradictory grounds and pretences, the votes of many persons who were duly registered and entitled to vote at the said election, and were desirous of voting for the petitioner; and who tendered their votes at the said election for the petitioner, and who ought to have been put upon the poll at the time of their offering to vote at the different booths at the said election; and who having been so refused and entered on the poll by the said deputies only as tendered votes, ought (as such frivolous and contradictory grounds and pretences for rejection were apparent upon the entries of the tenders, and were well known to the said sheriff,) to have been added to the poll by him, and counted on the poll.

And other persons who were entitled to vote at the said election, and who were duly registered, and offered to vote for the petitioner, and tendered their votes at the election, and demanded to be put upon the poll, were illegally, vexatiously, and unjustly refused as voters for the petitioner, and were not entered on the poll as voters, or as having tendered their votes for the petitioner; and all which votes ought also to have been added to the numbers on the poll for the petitioner.

That the petitioner states, and will shew by the poll and registry, and other evidence, if necessary, that the

misconduct of the said sheriff and gross partiality of his said deputies, John Nutt and John James Pierce, in taking the poll at their respective booths, is obvious and apparent, from the said sheriff and his said deputies having admitted on the poll for the said Frederick Villiers, numerous voters to whom precisely similar objections existed, without the smallest possible difference as to the voters of the petitioner, who were rejected by them; and it was apparent upon the register and the poll book as signed by the said sheriff, as returning officer, and was fully known to the said sheriff when he added up the poll for the purpose of making out his return, that if votes under precisely similar circumstances as to distance from the place of polling, as to slight variations in the spelling of names, as to the omission of one of the christian names of the voter, and as to the change of a freeman's residence from one part of the said city to another, and as to other equally trifling and frivolous objections, had not most partially and illegally been rejected from the poll by the said deputies, and put in a list of tenders only for the petitioner, and votes exactly similar admitted by the said deputies on the poll for the said Frederick Villiers, while they were taking the poll; the petitioner would have had the majority upon the polls for the different booths as delivered to the said sheriff for making his return; and if the said sheriff had put such tendered votes upon the poll, and included them in the petitioner's favour on casting the numbers on the said poll, as the petitioner is prepared to prove he was bound to have done in the exercise of his duty to the House, he having a full knowledge of all the above-stated circumstances, as the petitioner will prove, the petitioner would have a majority of good and legal votes upon the poll over the said Frederick Villiers, and would have been returned as member duly elected instead of the said Frederick Villiers. The petitioner is prepared to prove that he was

duly elected and ought to have been returned as one of the members to serve for the said city in this present parliament instead of the said Frederick Villiers; and that the said sheriff wilfully and vexatiously made an illegal and false return of the said Frederick Villiers instead of the petitioner, to the great prejudice and injury of the petitioner, and in the violation of the right of the electors of the said city, and of the privileges of the House; that in addition to the above allegations, if the petitioner is not deemed entitled to an amendment of the return, by having his name entered upon the return instead of the name of the said Frederick Villiers, the petition contained divers other allegations which were not entered upon, and prayed that the House would declare the return of the said Frederick Villiers was an illegal and false return and wholly void, and that the petitioner ought to have been declared duly elected and returned, and that the said return may be amended and the petitioner's name inserted in the place of the said Frederick Villiers, to take his seat as one of the members to represent the said city in parliament, or otherwise to declare the said election, so far as regards the said Frederick Villiers, to be wholly void.

At the close of the poll the numbers were, for Mr. Villiers 660, for Mr. Lushington 658. Besides these votes nine were tendered for Mr. Villiers, and nineteen for Mr. Lushington.

Where votes were tendered and rejected on the ground of the name in the register not being spelt in the same way in which the voter spelt it at the poll, although the name so spelt was *idem sonans* with that on the register, the Committee determined that the petitioner was entitled to the return, but leave was obtained for the sitting member petitioned against to question the election by petition within 14 days.

It appeared that at the poll booth over which Pierce presided, several persons who were on the register, and who intended to vote for Mr. Lushington, were asked, on their coming to the poll, to spell their names, and if there was any variance in the spelling of the name at the poll and the spelling of it on the register, the votes of such persons were rejected, but their names were entered in a separate part of the poll book as persons who had tendered their votes for Mr. Lushington.

The following are instances of the objections:—

No. 8, John Bourn, Monastery Street,—objected, "registered as Bourne," tendered for Lushington.

John Hart Radcliff was rejected because his name was spelt Radcliffe on the register.

Edward Thwaites was rejected because his name was spelt *Twaites*.

"Stephen Ells" was rejected because registered "Else."

It also appeared that Mr. Villiers's voters were generally permitted to pass without any variance in the spelling of their names being considered as an objection to their being permitted to vote.

Mr. Harrison, for the petitioner, in opening the case, proposed that the Committee should amend the poll by adding as many of the nineteen votes which had been rejected to the petitioner's poll, as would give the petitioner a majority on the poll, and amend the return by inserting his name instead of that of Mr. Villiers, and leaving the latter to petition for the seat.

In the *Carnarvon case* (*a*) the Committee came to a similar decision. In that case the deputy returning officer at Pwllheli, one of the places sharing the franchise with Carnarvon, had entered in the poll-books sixty-seven tenders for Sir Charles Paget and eleven for Major Nanney, by persons whose names had not been admitted on the register by the revising barrister. He then cast up the poll at the end of each page of the poll-book, reckoning equally the good votes and tenders. When the bailiffs of Carnarvon cast up the whole poll, they adopted, in defiance of the remonstrances of the agent for Major Nanney, the calculations that had been made by the deputy at Pwllheli, and by so doing gave a majority to Sir Charles Paget, whom they returned accordingly. On these facts being shewn to the Committee they caused the return to be amended,

(*a*) P. & K. 106.

by inserting Major Nanney's name in the place of that of Sir Charles Paget, and gave Sir Charles fourteen days to petition against the election of Major Nanney. For this purpose it is quite immaterial whether the votes tendered for the petitioner were good or bad, their names appear as tenders on the poll, and the frivolousness of the objections to them appear on the face of it likewise. There would therefore be no occasion, if the Committee should follow the precedent laid down in the *Carnarvon case*, that the petitioner should open his general case.

Mr. Austin, for Mr. Villiers,

Objected to Mr. Harrison being allowed to prove his case by instalments. It was the constant practice of Committees to require the counsel for the petitioner to open his whole case in the first instance. A similar attempt was made in the *Lincoln case* (*b*), where the Committee refused to allow the petitioner to divide his case against the sitting member, and the petitioner ought therefore to be required to open his whole case in the first instance.

Mr. Harrison.

No answer has been made to the *Carnarvon case.* In that case both parties came prepared to go into their whole case, yet the Committee thought proper to allow the petitioner's counsel to proceed as he did, on the question of amending the return, without requiring him to go into his whole case. This petition is framed in the alternative, for the express purpose of enabling us to proceed in this way, it prays " that the return may be declared an illegal and false return and wholly void, and that the petitioner ought to have been declared duly elected and returned, and that the said return may be amended, and the petitioner's name inserted, in the place of the said Frederick Villiers, to take his seat as one of the members to represent the said city in parlia-

(*b*) P. & K. 375.

ment, *or otherwise* to declare the said election, so far as regards the said Frederick Villiers, to be wholly void."

Mr. Austin in reply.

The statement or prayer of the petition is wholly irrelevant to the question whether the petitioner should not be required to open his whole case. There is nothing in this petition to take the course of proceeding out of the general rule. The mode proposed to be adopted by the Committee is utterly without precedent or authority. The *Carnarvon case* was very different from this. In that case there was a mistake only in the form of the poll-book. The returning officer, in taking the gross poll, added up the tendered votes with others; and the party who had the minority of the real having a majority of the tendered ones, the sum total was erroneously made out in favour of the wrong candidate. It was merely a mistake in the reckoning—an error in figures. In this case the votes have been tendered and rejected, their merits must therefore be inquired into by a scrutiny, which will oblige the petitioner to open his whole case.

The Committee decided that the petitioner should be allowed to proceed in his case as he proposed.

Mr. Harrison then having proved the poll-book, proposed that the name of John Bourn, one of the nineteen tendered votes, should be added to the petitioner's poll. His name on the register was Bourne. In the poll-book it was entered thus—" No. 8, John Bourn, Monastery Street, objected registered as Bourne, tendered for Mr. Lushington." After a short discussion as to whether the votes which were entered as tendered could be considered as tendered votes within the meaning of the Reform Act, the Committee decided that the vote should be put upon the poll.

Four other votes, which were rejected under similar circumstances, were then added to the poll, which gave

a majority to Mr. Lushington, on which the Committee resolved—

That several voters who had been rejected by the returning officer, were, in the opinion of the Committee, illegally refused, and ought to have been received on behalf of the Right Hon. Stephen Rumbold Lushington (*c*).

That Frederick Villiers, Esq. is not duly returned, &c.

That the Right Hon. Stephen Rumbold Lushington ought to have been returned, and that neither the petition nor the opposition to it were frivolous or vexatious; and

That the Chairman be directed to move the House that Frederick Villiers, Esq. be at liberty to question the election by petition within fourteen days (*d*).

One of the Committee then proposed that they should take notice of the conduct of the deputy of the returning officer.

On which Mr. Harrison, at the suggestion of the petitioner, stated that it was not his client's wish that the matter should be pressed against them, and accordingly the matter dropped.

(*c*) In the *Middlesex case*, 2 Peckwell, 2, it appearing that the sheriffs had acted with gross partiality in favour of Sir Francis Burdett, the Committee reported their misconduct to the House, who ordered them to be committed to Newgate, where they remained nearly two months, when they were reprimanded and discharged.

(*d*) The Chairman accordingly moved the House to that effect on the same evening, and leave was given accordingly, when the Clerk of the Crown attended to amend the return.

CASE VII.

BOROUGH OF NEW WINDSOR (*a*).

The Committee were appointed on the 24th March, 1835, and consisted of the following gentlemen:

Sir James Graham, Bart., M. P. for East Cumberland. *(Chairman.)*

J. Ennis Vivian, Esq. M. P. for Truro.
Sir Edward Dolman Scott, Bart. M. P. for Lichfield.
Rowland Alston, Esq. M. P. for Hertfordshire.
Henry Wilson, Esq. M. P. for West Suffolk.
Philip Pusey, Esq. M. P. for Berkshire.
Walter Long, Esq. M. P. for North Wiltshire.
Edward Bolton King, Esq. M. P. for Warwick.
Hon. Robert Henry Clive, M. P. for South Salop.
William Blamire, Esq. M. P. for East Cumberland.
Sir Harry Verney, Bart. M.P. for Buckingham.

Petitioners:—Sir John Elley; Electors in Sir John Elley's interest.

Sitting Member petitioned against:—Sir John Edmund De Beauvoir.

Counsel for the Petitioners in both Petitions:—Mr. Serjeant Spankie, Mr. Serjeant Heath, and Mr. Curwood.

Agents:—Mr. George Henry King and Mr. Eické.

Counsel for Sitting Member:—Mr. Harrison, Mr. Cockburn.

Agents:—Mr. Witham, Gray's Inn; Mr. Vowles, Windsor.

THE petitions in this case involved a charge of want of qualification against the sitting member, and also a scrutiny. They contained too, charges of treating, which were not entered into.

(*a*) The Reporters are indebted to their friend Mr. Falconer, for the notes of the cases decided in the latter part of this investigation.

At the close of the poll Sir John De Beauvoir had a majority of nine votes over Sir J. Elley.

The seat of Mr. Ramsbottom, the other member, who had a large majority over both the other candidates, was not disputed.

A qualification alleged to arise from being the eldest son of a person qualified to serve as a knight of the shire, must be disproved by the party disputing it, although no rental or description of the lands from which the father's qualification arises is given in the particular. *Quære*— Whether the possession, by a father, of lands in Ireland, of sufficient value to qualify him to sit in parliament, confers also a derivative qualification to sit for an English borough, on his eldest son and heir apparent.

Sir J. E. De Beauvoir had given in two particulars of his qualification; one on the 12th of March, when he took his seat, in compliance with the provisions of the statute 33 Geo. 2, c. 20, the other on the 20th of March, in compliance with the standing order of 21st Nov. 1717. They were precisely the same in every respect. The first qualification stated in them was "an annuity or yearly rent charge of £350, issuing out of five freehold houses in St. John Street, in the parish of St. Sepulchre, Middlesex, and a timber-yard and stables behind them, and granted to Sir John by an indenture dated the 2d day of December, 1834, and made between J. G. Fitzgerald, of Park Place, King's Road, Chelsea, Middlesex, of the one part, and Sir John of the other; the consideration was stated to have been £2900. The particulars then stated the payment and execution of the deed, and the name of the attesting witness to the execution and payment, in the usual way. The particulars then proceeded in these terms: "I am also qualified to sit in parliament by reason of my being the eldest son and heir apparent of Sir John Browne, bart., of that part of the united kingdom called Ireland, who is qualified by law to serve as a knight of a shire, and to be elected and returned to parliament, and to sit and vote as a knight of the shire."

An affidavit of Sir John E. de Beauvoir was also put in, sworn before two Middlesex magistrates, at Hatton Garden, on the 18th of February, 1835, in which he deposed as to his qualification arising from the annuity only.

On the opening by Mr. Serjeant Spankie, Mr. Harrison, on the part of Sir J. E. De Beauvoir, stated that he abandoned the qualification arising from the annuity.

The two particulars above mentioned were then put in by the clerk of the journals, and a copy of the affidavit sworn by Sir J. E. De Beauvoir, at Hatton Garden, and delivered by his solicitors to the agents of the petitioners, was also delivered in. It was then proposed, on behalf of the petitioners, to call the grantor of the annuity mentioned in the particular, in order to give a colour to the proposal intended to be made, that it was incumbent on the sitting member to prove his second qualification, arising from his being the son of a person who was qualified to sit as a knight of the shire. The Chairman, however, intimated it to be the opinion of the Committee that the petitioners ought to be satisfied with the abandonment, on the part of the sitting member, of the first qualification; and the argument then proceeded in this manner. Mr. Serjeant Spankie, on the first day of the Committee's sitting, opened the objection. Mr. Harrison, on the second day of the sitting, answered him. Mr. Serjeant Spankie replied, and Mr. Cockburn replied specially on the authorities cited by Mr. Serjeant Spankie.

Argument against the qualification.

First, The qualification relied on by the sitting member, is not valid or sufficient in law; for the circumstance of a person being himself qualified to sit as a member for a county, in respect of landed property situate in Ireland, does not give a derivative qualification to his son to sit for any place in England or Wales (*b*). Secondly, That under the circumstances of the case it was incumbent on the sitting member to prove his qualification, and not upon the petitioners to disprove it.

1st. The 9th of Anne, c. 5, requires that "no person shall be capable to sit or vote as a member of the House of Commons, for any county, city, borough, or cinque port, within that part of Great Britain called England,

(*b*) It was assumed throughout the argument, that Sir J. Browne's landed property was situate in Ireland.

the dominion of Wales, and town of Berwick-upon-Tweed, who shall not have an estate, freehold or copyhold, for his own life, or for some greater estate, either in law or equity, to and for his own use and benefit, of or in lands, tenements, or hereditaments, over and above what will satisfy and clear all incumbrances that may affect the same, lying or being within that part of Great Britain called England, the dominion of Wales, and town of Berwick-upon Tweed, of the respective annual value hereafter limited, viz. the annual value of £600, above reprizes, for every knight of a shire; and the annual value of £300, above reprizes, for every citizen, burgess, or baron of the cinque ports; and that if any person who shall be elected or returned to serve in any parliament, as a knight of a shire, or as a citizen, burgess, or baron of the cinque ports, shall not, at the time of such election and return, *be seised of or entitled to such an estate* in lands, tenements, or hereditaments as for such knight, or for such citizen, burgess, or baron respectively is hereinbefore required or limited, such election and return shall be void." The 2d section, however, provides, " that nothing in this act contained shall extend to make the eldest son or heir apparent of any peer, or lord of parliament, or of any person qualified by this act to serve as knight of a shire, incapable of being elected and returned, and sitting and voting as a member of the House of Commons in any parliament." There were thus two species of qualifications under this statute, one original, arising from the possession of an estate by the person himself, the other derivative, arising from being the son of a peer, or of a person qualified by the possession of an estate of £600 a year, to serve as a knight of a shire. Both, however, the original and derivative qualifications, under this statute, must have arisen from lands situate in England, Wales, or Berwick-upon-Tweed. The possessor of half Ireland or Scotland would not have been entitled to sit for any

borough in England, and his son would, *à fortiori*, be equally incapacitated. This was strikingly proved in the *Leominster case* (*c*), where Sir William Fairlie, although the possessor of a large landed estate in Scotland, was held incapable of sitting for a borough in England.

The statute, 59 Geo. 3, c. 37, which was passed, in a great measure, in consequence of the *Leominster case*, altered, however, the law as to original qualifications. It recites the statutes of the 9th Anne, and the 33d Geo. 2, c. 20, which rendered necessary the delivery in and swearing to their qualifications, by members, on taking their seats, and the 41st Geo. 3, c. 101, which was passed at the Union, but which did not contain any provisions to enable the holders of Irish landed property to represent English constituencies; it then recites that "it is just and expedient that the provisions of the last recited act, so far as relates to the possession of lands, tenements, and hereditaments within Ireland, as a qualification for members to serve in parliament for places within England and Wales, should be extended;" and it enacts, "that it shall be sufficient that such lands, tenements, or hereditaments, whereby any person who, from and after the passing of this act, shall be elected a member of the House of Commons of the parliament of the said united kingdom, for any county, city, borough, cinque port, town, or place, within that part of the said united kingdom called England, or the dominion of Wales, or the town of Berwick-upon-Tweed, or within that part of the said united kingdom called Ireland, shall make out his qualification, in manner by the said acts of the 9th year of the reign of her late Majesty Queen Anne, and the 33d year of the reign of his late Majesty, directed, shall lie or be either within that part of the said united kingdom called England, or the dominion of Wales, or the town of Berwick-upon-Tweed,

(*c*) Cor. & Dan. 1.

or within that part of the said united kingdom called Scotland, or within that part of the said united kingdom called Ireland." It is perfectly clear, from the express reference in this statute to the possession of the lands in Ireland as a qualification, that it only extends to original, and not to derivative qualifications; and the possession therefore of lands in Ireland by Sir John Browne, although it would qualify him to sit for a county in England himself, will not qualify his son, Sir J. E. De Beauvoir, to sit for any place in that part of the kingdom.

2dly. The rule by which petitioners, attacking the qualifications of sitting members, are obliged to prove their disqualification, has been carried to a great extent, but it surely cannot be extended beyond what in analogous cases is required in courts of law. There the rule, as stated by Mr. Roscoe (*d*), is, that " where the presumption of law is in favour of the affirmative, as where the issue involves a charge of a culpable omission, it is incumbent on the party making the charge to prove it, although he must prove a negative, for the other party shall be presumed innocent until proved to be guilty. Thus, where in a suit for tithes in the Spiritual Court, the defendant pleaded that the plaintiff had not read the thirty-nine articles, it was held that the proof of the issue lay on the defendant; *Monke* v. *Butler*, 1 Roll. Rep. 83; *Williams* v. *East India Company*, 3 East, 199; *Rex* v. *Hawkins*, 10 East, 216." " But," continues Mr. Roscoe, " where the affirmative is peculiarly within the knowledge of the party charged, the presumption of law in favour of innocence is not allowed to operate in the manner just mentioned; but the general rule, that he who asserts the affirmative is bound to prove it, and not he who avers the negative; 2 Russ. on Crimes, 692, 2d edit. Thus, in an action on the game laws, though the plaintiff must aver that the defendant was not duly

(*d*) On Evidence, p. 52.

qualified, yet he cannot be called upon to prove the want of qualification; *Spieres* v. *Parker*, 1 T. R. 144; *Rex* v. *Stone*, 1 East, 650. So in an action against a person practising as an apothecary, without having obtained a certificate under 55 Geo. 3, c. 194, the proof of the certificate lies upon the defendant, and the plaintiff need offer no evidence of his practising without it; *Apothecaries' Company* v. *Bentley*, 1 R. & M. 159." [Sir J. Graham. You do not deny the usage of Parliament, that the party attacking the qualification is bound to disprove the qualification?] No, but we submit that where an anomalous mode of proceeding has been established, this Committee will not extend it to instances to which it has never yet been applied. In all the cases that have occurred, the qualification attacked has been one which the party has sworn to at the table of the House, and every presumption is therefore taken in favour of the member who might, if the qualification was not sufficient, be supposed to have sworn incorrectly; and in the *Lincoln case* (*e*) especially, this argument was insisted upon by the counsel for the sitting member. Here, however, the qualification which the sitting member (no doubt through ignorance and without any improper motive) swore to before the magistrates, and at the table of the House, has been abandoned; there is no presumption therefore in his favour, as to the qualification on which he now relies, and the nature of which lies peculiarly in his own knowledge. The derivative qualification indeed, arising from being the son of a peer, or of a person qualified to sit as a member for a county, need not be sworn to. The proper course in such a case is, for the member to go up to the table and state that he is the son of a peer or person qualified as a county member, as was repeatedly urged in the arguments on the petition presented against the return of

(*e*) P. & K. 375.

Lord Dursley for Gloucestershire (*f*), in 1810, whose legitimacy, as the son of the Earl of Berkeley, was disputed. When, therefore, such a case presents itself, in which the particulars of qualification are peculiarly within the knowledge of the party, how is it to be met unless that party himself is called upon to prove it?

If the mere assertion of a man, that his father has an estate worth 600*l.* a year, above reprizes, is to entitle him to sit in Parliament, the statute of Ann. will become a mere nullity, for how is the father's estate to be discovered? Are inquiries to be made in every county in England, Wales, and Berwick-upon-Tweed, and, as it will be contended on the other side, in Scotland and Ireland too, in order to discover this estate? Even if this however were possible, and it was proved before a Committee that all these inquiries had been made and no estate had been found, still it might be urged that there was a possibility of one being discovered beyond John o'Groats' house, in the Orkney or Shetland islands. If the father himself had been elected, he would have been obliged to have delivered in a particular of his qualification; surely the derivative title of the son cannot stand in a higher light, or merit a greater protection, than the original title of the father. The only case in which a derivative title of this kind was disputed before a Committee, was the *Sandwich case* (*g*), in 1808. There the sitting member obliged the petitioner to deliver in a particular of his qualification, under the standing order; and when he gave in his qualification as heir apparent to a father, capable of sitting as a knight of the shire, summoned the father as a witness, and the son, rather than expose his father to an examination, abandoned his

(*f*) Hans. Parl. Debat. vol. xvii. pp. 219 & 314. The petition, which was not presented until after the time limited for the presenting of election petitions, under the statutes then in force, was thrown out on the 5th of June, 1810, without being referred to a Committee.

(*g*) Roe on Elections, part 3, cap. 2, sec. 5, p. 128.

petition. Whatever may have been the later decisions of Committees, it may very well be doubted whether that of *Colchester* (*h*) was not the most correct determination, by which the seat of Mr. Potter was avoided, because he had not complied with the standing orders, by delivering in a particular of his qualification. In the *Dover case* (*i*), an application was made to the House by the sitting member, to dispense with its standing orders, because he felt an almost absolute certainty of being deprived of his seat by a Committee; and it was only by the good fortune of his counsel, prevailing upon the Committee to decide that those standing orders were in effect mere nullities, that his seat was ultimately preserved.

The sitting member having therefore abandoned the qualification, which he has twice sworn to, on which he sat, and relying upon another, the particulars of which are in his own peculiar knowledge, and to which there not having been any obligation for him to pledge himself by oath, there is no presumption in favour of his innocence, we submit that the onus of proving that qualification lies upon him, especially as he has not complied with the standing orders of the House, by giving in any particulars of that qualification.

Arguments in support of the qualification.

The possession by Sir J. Browne of a sufficient estate in Ireland, to qualify him to sit as a knight of the shire, qualifies also his son to sit as an English member. This is the true construction of the 59 Geo. 3, c. 37, the intention of whose framers was to place the possessors of lands in Ireland and Scotland upon exactly the same footing as the possessors of lands in England and Wales, and that intention would not be accomplished if the same advantages were not extended to the sons of Irish and Scotch, as were enjoyed by the sons of English proprietors.

There is not an expression in the Acts of the 9 Ann.

(*h*) 1 Luders, 415. (*i*) P. & K. 423.

or the 33 Geo. 2, or the standing orders of 1717, which obliges the eldest son of a person qualified to sit as a knight of the shire, either to give in or to swear to a particular of his qualification. In practice it is well known that they never are called upon to do either one or the other. There is nothing to distinguish the case of a qualification derived from a member's father, from one arising from lands in the member's own possession. Both, if disputed, must be proved to be bad, and it lies upon the party disputing them to prove their invalidity, not on their possessors to prove their title. The petitioners are not in a worse situation than if they attacked the qualification of a member who had possessed it more than three years, and whom the standing orders would not oblige to set out in his particular, either the deeds by which he held his estate, or indeed any thing more than the mere situation and value of the land. In the *Sandwich case*, the sitting member would have been obliged to prove the disqualification of the petitioner, in whose favour there are not the same presumptions as exist on the part of a member elected and returned, had not the petitioner admitted the fact that his father was not qualified, rather than expose him to a public examination as to his property.

The rule settled by long practice, that the party attacking a qualification is bound to prove its defects, was adopted by every Committee in 1833, before whom the subject of qualification was raised. In the *Bath case* (*k*) the petitioners against Mr. Roebuck's qualification proved by an attesting witness the deed which they intended to attack. In the *Dover case*, the sitting member had sworn to one qualification at the poll; he had delivered in a particular of another at the table of the House on taking his seat; he had not complied with the standing order, by delivering in any particular, in accordance with its provisions at all, and he had only

(*k*) P. & K. 1.

within six days before the meeting of the Committee, sent to the agents of the petitioners a statement of a qualification, differing from either of the two qualifications he had previously sworn to, and yet the Committee not only decided that it was not incumbent upon him to prove his qualification, but refused an application from the petitioners for permission to divide their case, and prove a disqualification, in the event of its being decided that the onus lay upon them (*l*). In the *Lincoln case* (*m*), the Committee went so far as to decide that the petitioners must prove the execution of the member's own title deeds, produced by him from his own custody, before they would allow them to point out a defect apparent upon the face of them. In the *Coventry* (*n*) and the *Carlow* (*o*) *cases* also, the petitioners were called upon to prove the deeds upon which the sitting member's title depended, before they were allowed to dispute their qualifications.

It was to be hoped that this Committee would not deviate from the rule which had been adopted by all preceding Committees, with hardly an exception, and would not call upon a sitting member, by the production of his father's deeds, to expose his title to every objection which the ingenuity of counsel could suggest.

The Committee decided that the petitioners were bound to prove the negative of the qualification (*p*).

26th March. Time granted under the circumstances to

The petitioners then applied for time in order to bring forward the sitting member's father to prove his disqualification.

The facts proved in support of this application were,

(*l*) P. & K. 417.

(*m*) Ibid. 382.

(*n*) Ibid. 248.

(*o*) Ibid. 408.

(*p*) Although no formal decision was made by the Committee as to the sufficiency of a qualification for an English county or town, arising from the possession, by the member's father, of a sufficient landed estate in Ireland, to qualify him to serve as knight of the shire, yet a strong opinion was expressed by the Chairman, in the course of the argument, that it would do so.

the petitioners to produce witnesses to disprove the qualification of the sitting member.

that the agent of the petitioners received notice of the particular containing the amended qualification on Friday the 13th of March; that he immediately applied to the Speaker for his warrant to bring Sir J. Browne and his title-deeds; that some doubts arising as to the form of this warrant, he did not obtain it till Tuesday the 17th, on which day an Irish agent, by his directions, enclosed it in a letter, which he sent by the post to an Irish solicitor in Dublin, with instructions to serve it on Sir J. Browne, whose general residence was in Dublin; that the Irish agent received a letter from the solicitor in Dublin that morning, (the 27th,) in which it was stated that Sir J. Browne had gone to Bray when the letter of instructions reached Dublin.

Mr. Serjt. Spankie, in support of the application, relied on these facts.

Mr. Cockburn, contrà, cited the *Lincoln case* (*q*), where a similar application was refused, and argued on the general rule of Courts of Law, that parties must be prepared with their evidence when they come to trial.

The Committee determined that further time should be given to the petitioners, until the end of the scrutiny, to produce further evidence as to the qualification.

No further evidence was produced, as the case on the scrutiny was subsequently determined in favor of the petitioners.

Proof of the poll.

Poll books received from the custody of the town clerk, in whose care they had been ever since the close of the second day's poll.

The Town Clerk was called to produce the poll-book. He proved that the poll was taken by one poll clerk at a booth where the mayor, who was the returning officer, presided; that at the close of the first day's poll the poll clerk delivered the book, sealed up, to the mayor in his presence; that on the morning of the second day's poll the mayor, in his presence, delivered the book back to the poll clerk; that on the close of the second day's poll, the poll clerk had delivered the

(*q*) P. & K. 378.

book to him in the presence and by the direction of the mayor, and that he had kept it carefully ever since.

Mr. Cockburn against the reception of the poll-book.

The poll-book has not been in the proper custody, and cannot therefore be received in evidence. The 68th section of the Reform Act specially provides that the poll clerks shall deliver the poll-books, at the close of each day's poll, to the returning officer or his deputy, and each deputy shall, at the close of the poll, transmit the books to the returning officer, who shall receive and keep the books until the following day, when he shall declare the poll. Here the books have not been, since the beginning of the second day's poll, in the custody of the mayor, who is the returning officer of Windsor.

Mr. Serjt. Spankie, in support of the reception of the poll-book.

The provisions in the Reform Act as to the custody of the poll-books are merely directory, and do not extend to any period after the poll has been closed. Even if they have not been in the proper custody at all, Committees will receive the books if it is proved that they have been kept with due care, and are produced unaltered. In the *Herefordshire case* (*r*) the books were produced by the clerk to the under-sheriff, who had kept them since the close of the poll, although he ought, under the provisions of the 10 Anne, c. 23, to have delivered them over to the clerk of the peace within twenty days after the election, and yet the Committee determined they would receive them from the person who had the actual possession of them. Here the town clerk was, in fact, the servant and agent of the mayor, and his possession was therefore that of the mayor.

Mr. Cockburn in reply.

In the *Herefordshire case* the under-sheriff had ori-

(*r*) 1 Peck. 208.

ginally acquired legal possession of the books. Here the town clerk had got possession of the books without any legal title whatever, for they ought to have been given to the returning officer, according to the strict provisions of the Reform Act, which were not, as was contended, directory, but in fact most essential to be complied with. The law having, therefore, provided a proper person to have the custody of the books, and to speak to their authenticity, and that person not being here, they cannot be received.

The Committee determined that sufficient evidence of the proper custody of the poll-book had been adduced to allow it to be given in evidence.

Henry Lawson's case.

March 25th. The parting previously to the 31st of July by a 10*l.* householder, with the house in respect of which his name was inserted in the register, if not objected to before the revising barrister, is not an objection that can be taken before a Committee.

The voter was registered for a "house, Peascod Street." He was proved to have left, in the autumn of 1832, a house in Peascod Street, and to have gone in the occupation of a house in a street called William Street, which had been recently built on ground formerly called Peascod Street, but which ran at right angles with that part of the old street, which still retained the name of "Peascod Street."

Mr. Serjt. Spankie, against the vote,

Contended that the voter could not at the poll have truly answered the third question, for he did not then possess the qualification arising from the occupation of the house in Peascod Street, in respect of which his name was inserted in the register. Committees have always held that the voter must retain the same qualification at the poll as he had on the 31st July, the day up to which the register was made. *Southampton case*(*s*), *Rochester case*(*t*).

Mr. Cockburn in support of the vote.

The change of residence in this case, if any, was be-

(*s*) P. & K. 234. (*t*) *Ante*, pp. 109 and 112.

fore the 31st of July, 1834. If there was any objection to this voter it might therefore have been taken before the revising barrister, and consequently cannot be urged before the Committee. In fact, however, the voter had a good right to be inserted on the register in respect of his house in William Street, and had an objection been taken, it would have been overruled by the barrister, who would have corrected the mistake of the overseer in inserting the situation of the voter's house by its old name of Peascod Street, instead of its present name of William Street.

The Committee determined the vote to be good (*u*).

Edward Meyrick's case.

March 31st. The pulling down and entirely re-building the house for which the voter was registered does not destroy the vote.

The voter's house, in respect of which he was registered, had been pulled down since the registration, and a new one, of more than 10*l.* annual value, erected on its site, which the voter had entered into the occupation of before the day that he polled. The voter had paid rates for a house on this site without interruption, from the registration up to the polling.

Mr. Cockburn against the vote.

This is not the same house in respect of which the voter's name was inserted on the register. The Committee have already decided that the change by a party of the subject-matter of his qualification vitiates his vote, and they have, in all cases where a man has not retained, at the time of the poll, the same qualification as he had on the preceding 31st of July, decided that his vote must be struck off. The legislature has provided on a general principle, and not with regard to individual cases, that the premises constituting the qualification must be identical at the time of registration and polling, in order that no man should be permitted to vote whose qualification might not have been submitted

(*u*) Accord *Southampton case, Draper's case*, P. & K. 231.

to the scrutiny of a revising barrister. If, therefore, the new house were worth many thousand pounds more than the old house, still as it only came into existence since the registration it could confer no qualification on its occupier, for the electors of Windsor had no opportunity of questioning its value. It might indeed have been of much less value than the former house, and yet it would have been equally impossible for them to have objected to it. The case, indeed, stands precisely on the same ground as that of a change from one house to another in the same street, which would, although the second was the most valuable of the two, confessedly have the effect of destroying the vote. It is not in respect of the site of the house that the voter gains a qualification, but from the house itself. The payment of rates and taxes does not form part of the subject-matter of the qualification, but it is a mere condition necessary to be complied with by the voter previous to having his name inserted in the register. The voter not having therefore the qualification for which he was registered, his name ought to be struck off the poll.

Mr. Serjt. Spankie in support of the vote.

It would be a most extravagant conclusion were the Committee to construe repairs and improvements of part of the subject-matter of the qualification into a disqualification. The house, and the land covered by the house, constituted aggregately a qualification.

The Committee stopped the counsel, and declared the vote to be good.

John Lawrence's case.

26th & 27th March. The evidence of a voter cannot be received to support his own vote against an

The objection against this voter was a change of occupation. Evidence was given that he had changed his residence at Michaelmas from one house to another in Peascod Street. A witness was then called to prove a conversation before the election, in which the voter had admitted that he had also removed all his furniture,

and given up all occupation of the first house. This evidence, after an objection to it had been taken and overruled, was allowed, and the conversation was proved. It was then proposed to call the voter to contradict the evidence given against his vote.

objection arising subsequently to the 31st of July.

Mr. Serjt. Heath, against the admission of the evidence.

It is a general principle of law, that no man can be a witness in his own cause. It is equally undoubted that every voter has an interest in his own vote. This was always supposed to be the case before the Reform Act passed, and it is more effectually so now than it was before that time, for if the vote is declared to be bad by a Committee, it will be struck off the register by the House, and the voter will be unable to vote at any election before the next 2d of November, when a new register comes into force.

It is no doubt true, that as the legislature has for public convenience authorized, by statute, deviations from the general law in the case of rate-payers, so the *New Sarum* Committee (*x*), rather than depart from the principle of Courts of Appeal, to decide upon the same evidence as was before the inferior Court, permitted the voter to be examined before them upon the same facts as he had been examined upon before the revising barrister. Neither that Committee, or any other Committee, since the passing of the Reform Act, has, however, permitted voters to give testimony indiscriminately in favour of their own votes. In fact, the *New Sarum* Committee refused to allow a man to be examined to prove that he had tendered his vote (*y*). In the present case a violation of the general rule of law is attempted without any necessity, and unsupported by any analogy.

Mr. Cockburn in support of the admissibility of the evidence.

(*x*) *Humby's case*, P. & K. 253; *John Perry's case*, id. 263. (*y*) *Isaac Young's case*, id. 254.

The *New Sarum* Committee permitted the voter to be examined to prove the occupation of his house. Why should not the present Committee allow a voter to do exactly the same thing? Surely if a revising barrister has the power of examining a voter as to his right to vote before the 31st of July, a Committee must have the same power as to his occupation after that period. It would be a great anomaly that the Committee which sits to examine as to the continuance of a qualification up to the time of polling, just in the same way as the revising barrister does as to its continuance up to the 31st of July in each year, should not have the same powers of examination as the revising barrister. The presumption is just as great that a voter will tell the truth after he has obtained and actually exercised the franchise, as when the question is whether he shall be put on the register and acquire the right to vote at all.

The Committee decided, that "the voter could not be called as a witness to sustain his own vote."

The vote was ultimately determined to be bad.

Thomas Bricknell's case.

March 27th. An inhabitant paying scot and lot, has no right to vote unless he has paid up all the rates due from and legally demanded from him.

The voter was one of the old constituency of Windsor, which, according to the last determination of the House, is the inhabitants paying scot and lot (z). The last rate made for the voter's parish, previously to the election, was on the 16th of October, 1834. The voter was included in it, but on being applied to by the assistant overseer, refused to pay it, saying it was not convenient for him to do so, as he was out of employ, and thought he should be obliged to apply himself to the parish for assistance; and he had not paid it at the time he voted.

Mr. Curwood against the vote.

The voter is one of the class whose rights are reserved under the 33d section of the Reform Act, by which it is provided "that he shall retain such right of voting so long as he shall be qualified as an elector according to

(z) See *New Windsor case*, 2 Peck. 287.

the usages and customs of such city or borough, or any law now in force." Nothing was more settled in the election law in force at the time the Reform Act passed, than that a scot and lot voter must have paid all rates payable from him up to the time of his giving his vote, if legally demanded from him. The voter in this case had not paid his rate when demanded legally from him by the assistant overseer; he did not therefore remain qualified as an elector according to the usages and customs of the borough, and the law in force at the time of passing the Reform Act, and his vote is consequently bad.

Mr. Cockburn in support of the vote.

By the provisions of the Reform Act, the register is made conclusive upon all points as to the qualification of the electors whose names are inserted in it. If a man loses the qualifying property in respect of which his name is inserted in it, Committees have held that he has lost his right to vote; but the qualification in this case is a personal qualification; the voter still remains an inhabitant paying scot and lot; he is liable to, and probably may have since paid the very rate for the non-payment of which his vote is now attacked, and he had not therefore lost his qualification at the time that he gave his vote. If the register is not to be conclusive up to the 2d of November in each year, as to the rights of scot and lot as well as every other class of voters, of what use is the insertion of scot and lot voters in the register at all? [Sir J. Graham. The third question is the vital point in this case. The qualification of a scot and lot voter depends upon his paying rates. Could a conscientious scot and lot voter, who had not paid his rates, answer in the affirmative to the third question, that he had the same qualification in respect of which his name was originally inserted in the register?] The payment of rates by the scot and lot voter is only evidence of his possession of the qualification, and does not constitute the

qualification itself; for the right of inhabitants paying scot and bearing lot to vote at elections of members of parliament existed long before the institution of poor-rates by the statute of the 43d of Eliz. The revising barrister had satisfied himself by proper evidence, that the voter in this case possessed the qualification on the 31st of July, 1834; and if the Committee admit evidence to show that he did not possess it, they will in fact open the register.

The Committee determined the vote to be bad.

William Hull's case.

April 31.

No objection can be made to the vote of an inhabitant paying scot and lot on the ground that he does not occupy the house for which he is rated.

The voter had a house of his own in Distiller's Row, which he let to another person: but he paid the rates for it himself, and had done so up to the time of the election. He himself lived as a lodger at a house in Garden Court, in the immediate neighbourhood of Distiller's Row, and had done so for upwards of seven years before the election, during which time he had voted at previous elections. The revising barrister had altered his qualification in the list from "house" to "scot and lot," but it was not proved that any objection had been made to the voter before him.

Mr. Cockburn in support of the vote.

The disqualification, if any, of not living in the house for which the voter had paid rates, was one which had not been incurred subsequently to the 31st of July. It might therefore have been taken before the revising barrister, and as it was not, the Committee have no jurisdiction in the case. The mere alteration of a mistake of the overseer's by the revising barrister, is not such a decision by him as by the provisions of the Reform Act is subject to the revision of a Committee, for it is not a decision in consequence of which a vote is either inserted or retained in the register. But it is incorrect to hold that an inhabitant paying scot and lot must occupy the house for which he is rated, for provided he pays his

rates and lives within the borough, he may change his house or his lodgings as often as he pleases. The sole test of his qualification is the being an inhabitant of the town, and paying the poor-rates. The rate, indeed, has been constantly termed the register of scot and lot voters. Both of these tests are united in the voter, and his vote must consequently be retained on the poll.

Mr. Serjt. Spankie against the vote.

If the revising barrister has in any manner exercised his jurisdiction over a vote, it may be discussed before a Committee. But the question on this case is quite independent of any decision of the revising barrister, for no one, whether on the register or not, can vote as an inhabitant paying scot and lot, unless he is the occupier of the premises for which he is rated. At the time that the poor-rate became the register of scot and lot voters, it could not legally have been imposed in respect of a house upon any one else than the occupier. It is true that now in large towns the landlord is frequently rated for houses of a particular value, under the provisions of a recent statute (*a*); but the tenant is the person primarily liable to be rated, and in fact generally is so. No one ever heard of a lodger, occupying neither house nor land in a borough, voting as an inhabitant paying scot and lot.

It is quite clear that a scot and lot voter, although registered, cannot vote, unless he is at the time of voting in possession of every constituent part of his qualification. The 33d section of the Reform Act, by which the rights of that class of voters are reserved, only provides "that the voter shall retain such right of voting so long as he shall be qualified as an elector according to the usage and customs of such city or borough, or any law now in force." No person, however, would, at the time of the passing the Reform Act, have been entitled to vote for Windsor, either by the usages or customs of the borough,

(*a*) 59 Geo. 3, c. 12.

or by any law then in force, who did not occupy the premises for which he was rated. The 26 Geo. 3, c. 100, the provisions of which are perfectly compatible with those of the Reform Act, and therefore unrepealed by it, specially provides, "that no person shall be admitted to vote at any election as an inhabitant paying scot and lot, unless he shall have been actually and bonâ fide an inhabitant paying scot and lot six calendar months previous to the election at which he shall tender his vote; and if any person should vote at any such election, contrary to the true intent and meaning of that act, his vote should be deemed null and void." The right of a scot and lot voter being therefore reserved only so long as he should be qualified according to the law in force at the time of the passing of the Reform Act, and the law at the passing of the Reform Act being by the 26 Geo. 3, that he must have been so qualified for six calendar months before he voted, the vote of this man, who is proved not to have been qualified for seven years before he voted, must be declared bad.

The Committee determined the vote to be good.

Peter Davis's case.

March 27th. An objection on the ground of infancy, not taken before the revising barrister, cannot be taken before a Committee.

The voter in this case had been placed on the register as a £10 householder. His mother proved that he was not quite eighteen years old when he voted.

Mr. Serjt. Spankie against the vote.

Minority is an objection at common law to a vote, for an infant is held incapable of doing any act requiring mature discretion. The common law was enforced and declared, by the 7 & 8 Will. 3, c. 25, the 8th section of which provided "that no person whatsoever under the age of one-and-twenty years, shall at any time hereafter be admitted to give his voice for the election of any member or members to serve in this or any future Parliament." The Reform Act made no difference in the law in this respect, for in all the clauses which

confer the franchise, as the 19th upon copyholders, the 20th upon leaseholders, and the 27th upon the holders of £10 houses, the persons to whom those rights are bestowed are "every male person of full age and not subject to any legal incapacity," who shall possess the various qualifications mentioned in those sections.

Mr. Cockburn in support of the vote.

The question is not as to the capacity or incapacity of an infant to vote, but whether the Committee has jurisdiction to inquire into the validity of this man's vote, against whom no objection appears to have been made before the revising barrister. The 60th section of the Reform Act has given parties to an election petition the power "of impeaching the register in force at the time of the election, by proving that in consequence of the decision of the barrister who had revised the lists of voters from which such register shall have been formed, the name of any person who voted at such election was improperly inserted or retained in such register, or the name of any person who tendered his vote at such election improperly omitted from such register." The successive determinations of the *Petersfield, Bedford, Oxford,* and *Southampton* Committees in the session of 1833, have established as law, that the jurisdiction of Committees was limited to those cases over which the Reform Act had specially granted them a power of deciding, and no attempt has been made to dispute the validity of those determinations before any Committee this session. How then can the case of this voter be distinguished from that of any other voter upon the register, to whom no objection was made, and upon whose case the barrister had made no decision, in consequence of which, according to the terms of the 60th section, the validity of the register might be impeached? It cannot be said, that objections on the ground of personal incapacity cannot be taken before a barrister, for the 50th section provides, if an objection has been taken before

him, " in case it shall be proved that such a person was then incapacitated by any law or statute from voting in the election of members to serve in parliament, such barrister shall expunge the name of every such person from such lists." Unless this Committee is prepared to overrule all the previous decisions, by throwing open the register, the vote of this man cannot be disputed.

Mr. Serjt. Spankie, in reply (*b*).

The cases which have been cited only decide that the register shall be conclusive upon questions regarding the property of the voter. There has been no decision upon personal disqualifications except one a few days ago in the *Rochester* (*c*) Committee, where it was decided that a custom-house officer could not vote. Infancy is however a stronger ground of disqualification than that of service in the customs, for the latter was made an incapacity to vote by a special statute only, the former always existed at common law. It may be very much questioned indeed, whether the revising barrister has the power of discussing an objection arising from infancy, for the infant at the time of the registration may have attained his majority before the occurrence of an election. An infant who came of age on the 1st of August surely could not be struck off by a barrister because he was not of age on the 31st of July, and thus the period of his minority for the purposes of elections be prolonged for fifteen months. Such an interpretation of the Reform Act would in fact be excessively hard upon the interests of infants, and yet if that was not adopted the present case must be considered as open for the jurisdiction of the Committee. The true construction of the act, no doubt, was that the infants could at any time be struck off the poll by Committees who could examine as to their

(*b*) A reply was granted in this case as a special indulgence, the Chairman stating that in future where the party supporting the vote called no witnesses, no reply would be allowed.

(*c*) *George Wilkinson's case*, ante p. 107; and see *Lord Southwell's case, Droitwich*, ante, p. 65.

age at the time of voting, but could not be taken off the register by the revising barrister, who could not tell what their age might be at the future time at which they might be called upon to exercise their franchise.

Mr. Cockburn.

The 27th section says, every male person of *full* age, &c. shall, if duly registered, be entitled to vote. It is clear therefore that the legislature contemplated that a person should be of full age to be put upon the register. The only point which was inquired into by any of the Committees in 1832, was where the case had been discussed before the revising barrister, and if it had not, they considered that it fell within the rule laid down by them as to not opening the register. The decision in the *Rochester case*, might be explained by the circumstance of the disqualification of a custom-house officer, arising from his filling that situation either at the time that he votes or having done so within twelve months before it, the latter of which circumstances the revising barrister has no power of ascertaining.

The Committee determined "that they would not reopen the register in this case, and consequently that the vote of Peter Davis was a good vote, and ought to remain on the poll."

Henry George's case.

March 28th. A voter, whose name had been inserted in the register for a qualification he did not possess on the 31st of July, but who had a good qualification for which his name had not been

This was the case of a tender. Henry George, in November, 1833, quitted a house in Gloucester Place, and went to live in a house in Peascod Street. His brother proved that before the lists were made out he had applied to the assistant overseer, who was employed to make them, and desired him to have Henry George registered for Peascod Street instead of Gloucester Place. The assistant overseer told him he would take care his brother was properly registered. In fact, however, he put him in the list of 10*l.* householders for Gloucester Place. The brother declared, that confiding

inserted through the misconduct of the assistant overseer, directed to be put on the poll, although his vote had been rejected by the returning officer.

in the overseer's representations, he never looked at the list on the church door or attended before the barrister. The name, consequently, stood on the register, "Henry George, house, Gloucester Place." On Henry George's going to the poll, the two first questions were put to him; an objection was then made to him by the professional agent for Mr. Ramsbottom, at the suggestion of one of Sir J. E. De Beauvoir's agents. The mayor then either asked him whether he resided in the same house as he formerly did, or caused the third question to be put to him, but upon this point the evidence varied. In the result, however, the mayor rejected his vote. Very contradictory evidence was given as to his tender, two witnesses deposing that he did tender his vote for Elley and Ramsbottom, and two others, that they must have heard him if he had done so, and that they did not hear him. The entry on the poll was Henry George, Peascod Street.

Mr. Cockburn against the tender.

Assuming the tender to have been made, the poll is the only proper evidence of the qualification in respect of which the party claims to vote. If, then, this man claimed, as it appears from the poll, to vote in respect of the qualification stated in the register, the returning officer must be held to have acted rightly in having, in the strict exercise of his duty, forbidden him to vote for a qualification which he did not possess. If he had indeed a right to vote for a house in Peascod Street, it was his business to have examined the lists to see if he was registered, and if he was not, to have attended before the revising barrister and procured the mistake in the description of his qualification to be rectified, which the barrister, under the 50th section of the Reform Act, would have had the power to do. Had the barrister refused to do so, the party might have tendered his vote under the provisions of the 59th section, and the Committee would then have had jurisdiction to entertain this

case. Here, however, there was no decision of the barrister, and consequently the Committee have no jurisdiction, for their power as to tenders is limited by the 60th section to the tenders of those persons whose names were improperly omitted from the register in consequence of the decision of the barrister.

It is clear, however, from the evidence, that the voter never in fact stated for whom he tendered his vote, and therefore there is no legal evidence of a tender upon which the Committee can act.

Mr. Serjt. Heath, in support of the tender.

The decision of the Committee in *Lawson's case*(*d*) has determined this question. There the voter had changed the house for which he was registered before the 31st of July, and the Committee held that a disqualification arising from that circumstance could not be entered into. How then can they now enter into the consideration of a disqualification which (if any) arises from precisely the same circumstance?

The 59th section of the Reform Act alludes to a particular class of tenders, of which this is not one, for it refers only to the tenders of those persons who have been omitted from the list in consequence of a decision by the revising barrister. In this case, however, the barrister made no decision, and as no objection was made to the voter before him, he could have made no decision upon it. For that very reason indeed the vote must be held good, under the general rule that the validity of a vote upon the register unobjected to before the barrister cannot be disputed before a Committee.

The evidence is, as we contend, conclusive as to the actual tender of the voter for Elley and Ramsbottom, but were it not so, in a case of disputed testimony the presumption of the Committee ought to be in favour of the voter. Independently, however, of the evidence

(*d*) *Ante*, p. 153.

as to the actual tender, the circumstances under which this man came to the poll, and the fact of the question having been put at the instigation of Sir J. E. De Beauvoir's agent, amounts to such cogent presumption of the side on which he intended to give his vote, that the Committee would be well warranted by the authority of the *Harwich case* (*e*) in deciding that they amounted to a constructive tender.

Mr. Cockburn in reply on the cases cited (*f*).

Whatever may have been the opinions of the Committee in the early part of the discussion on Colonel *Robertson's* vote in the *Harwich case,* on the point that the circumstances under which he appeared before the returning officer amounted to a tender, yet there was the distinct evidence of two witnesses, who swore that he actually named the candidates for whom he tendered his vote, and it must be considered that the Committee came to their determination upon that evidence, and not upon the loose and unfounded doctrine of collecting a man's vote from appearances and suppositions. How many cases indeed might be enumerated in which voters have come up to the poll in the company and under the protection of the very party against whom they have finally given their votes. Whatever, however, may have been the grounds of the decision in the *Harwich case,* it is totally inapplicable to the system of voting established by the Reform Act. According to the true construction of that act no person ought to be allowed to vote who is not upon the register, or being upon the register for any other qualification than for that in respect of which his name is inserted in the register. If the voter refused to answer the third question, he cannot be permitted to vote, because if he was, he would not vote

(*e*) 1 Peck. 395, 396.

(*f*) Mr. Cockburn was desired by the Committee to confine his reply to the *Harwich case,* and only to comment upon such parts of it as had been referred to by Mr. Serjeant Heath.

for the qualification for which his name was inserted on the register, which the decisions of this and every other Committee have decided that he must retain at the poll, in order to enable him to give a valid vote.

The Committee determined "That the vote of Henry George was improperly rejected, and that he was to be put on the poll as a voter for Sir John Elley and Mr. Ramsbottom."

A person who has been in the room cannot be examined as a witness.

In this case the mayor of Windsor was called as a witness. He stated, on the voir dire, that he was in the committee-room the whole of the first day the Committee sat, and heard the opening, and that he had been again in the room for two or three minutes that day. He had been originally summoned as a witness on the part of the petitioners and discharged, and had been sent to the day before only, and told he would be wanted as a witness for the sitting member.

The Chairman asked "whether there was any safety for Committees unless they adhered to the strict rule of not admitting as witnesses persons who had been in the room any part of the investigation?" The Committee resolved, that in strict adherence to the general rule which they had laid down, and from which they did not mean to depart, the mayor of Windsor could not be examined under the circumstances of his having been in the room any part of the time, and they expressed a wish that it should be understood that the presence of any person would prevent his being examined as a witness, agents being the only persons excepted.

A person who has been in the room may be examined to prove that another person has been so.

On another witness being called, Mr. Serjeant Heath objected to him as having been in the room, and proposed to prove this by calling the beadle of Windsor, who had been stationed at the door to prevent witnesses from entering. The beadle, on being called, stated that he had been in the room about six times, for about a minute each time, in order to bring back witnesses who had passed by him. After some discussion on this point,

the Committee resolved that the order for the exclusion of witnesses should bear date from the postponement of the consideration of the qualification on the second day, and on the commencement of the scrutiny. They also decided that George Wiggins, who had acted as door-keeper, might be examined as to the breach of the order of the Committee.

Robert Batt's case.

March 28th. The being inserted in the register by a wrong christian name does not destroy the vote. Where a returning officer has refused to receive the vote of a man on the ground of his not answering the question under the Reform Act, as to his identity, a Committee will put him on the poll on its being proved that he was the person inserted in the register by a wrong christian name.

This was the case of a tender. On the register there was the name of "Richard Batt." It was proved by the town-clerk that Robert Batt had the qualification attributed in the register to "Richard Batt," and that there was no other person in the town of either of the names who could have been entitled to have been registered, except Robert Batt. When Robert Batt came to vote, the oath to his identity was put to him in the terms prescribed by the 58th section of the Reform Act, and he took it, and then tendered his vote for Sir J. Elley. Some doubt, however, having arisen as to whether he understood the oath, the two first questions permitted by the same section of the Reform Act were put to him; he declined to answer in the affirmative the question as to his identity, and the mayor consequently refused to put his vote on the poll.

Mr. Curwood, in support of the tender.

There is no doubt, in this case, that Robert Batt who tendered his vote, is the same person as Richard Batt, whose name appears on the register as a person entitled to vote. The *New Sarum Committee* decided in the cases of *William Morris* and *James Turner* (*g*), that the insertion of the voter in the register by a wrong christian name, shall not destroy his right to vote, and it is to be hoped that this Committee will come to a similar determination.

(*g*) P. & K. 261.

Mr. Cockburn against the tender.

The mayor acted correctly in refusing the vote of a man who declined to answer that he was the same person as was described in the register. It was impossible, indeed, for a returning officer who had any regard for his duty to have acted otherwise. The refusal of the voter to answer the question was, in fact, the cause of his vote not having been received. Several Committees have strictly laid down the rule, that they will only admit the same evidence before them that has been adduced before the barrister. Why then should this Committee, sitting as a court of appeal from the decision of the returning officer, receive any other evidence than what was before him? How much stronger indeed is the reason for the non-admission of further evidence in the case of an appeal from a returning officer, than in an appeal from a barrister, for on the points that the returning officer is to decide, both the evidence and the means of procuring it are marked out by the statute. How then is the Committee to decide that this man has a right to vote, in opposition to his own admission, that he was not the person described on the register?

The admissions of voters against their votes, even in ordinary conversation, have been received by this Committee, and their votes have been struck off the poll in consequence of them; but here you have the admission of a voter, not given casually, but after consideration, and before an officer authorized by law to receive it. Even if the testimony of the witness who has been examined is to be received, what is the value of his testimony—that this man is the person whose name is on the register—in opposition to the same man's own deliberate avowal that he is not that person.

The Committee determined that the vote of Robert Batt was a good vote, and ought to be inserted on the poll under the name of Robert Batt, as tendered for Sir John Elley.

William Davis's case.

April 2d.

Where the third question under the Reform Act has been put put at the poll, the Committee would not permit evidence of the change of occupation by a voter between the 31st of July and the poll, to be entered into (*h*).

The name of William Davis was entered on the poll-book, after which was written the word "rejected." Witnesses were called on the part of the petitioners, (who sought to put William Davis on the poll,) to prove that he had promised his vote to Sir John Elley, and had answered in the affirmative the three questions at the poll, but that an objection was then taken to him by Mr. Ramsbottom's agent, and that he was not asked for whom he intended to vote.

Mr. Cockburn then proceeded to call a witness on the part of the sitting member, who deposed that William Davis had left the occupation of the house in respect of which he was registered, and had gone into the occupation of another house. The examination of this witness was, however, stopped by the chairman at the request of a member of the Committee, and Mr. Cockburn was asked whether it was competent for the Committee to go into the question of the change of occupation, it being the opinion of the Committee, that they had no jurisdiction to inquire further than the returning officer could, who had only the power of putting the three questions prescribed by the Reform Act. A discussion then took place between the counsel, the result of which was, that the Committee decided that the counsel for the sitting member should proceed, first, to show that the third question was not put. A witness was then called on the part of the sitting member, who deposed, that the third question was twice put to William Davis; that the first time it was put he answered in the negative to it, and the second time it was put he would not give a direct answer to it, upon which the mayor had refused to let his vote be put on the poll.

Mr. Cockburn, against the reception of the tender,

First contended, that it was clear from the evidence,

(*h*) The determination of the Committee on this point has not been followed in any subsequent case. See *Worcester case, post.*

that the third question was put and answered in the negative, but that even had there been a doubt on the evidence, the presumption of the Committee must be in favour of the returning officer having acted properly in the rejection of the vote.

Secondly, He contended that the right of a voter to tender must be either according to the provisions of the Reform Act, or in pursuance of the law existing antecedently to it, and unrepealed by it, as not being inconsistent with its enactments. The right of tendering, which is conferred by the 59th section of the Reform Act, is specifically confined to a particular class of persons whose names have been excluded from the register by the decision of the revising barrister; and the jurisdiction of Committees to decide upon the validity or invalidity of the votes thus tendered, is reserved to them by the 60th section of the same act. There is no jurisdiction, however, reserved by that act to Committees over any other species of case in which a returning officer may think proper to refuse to receive a vote. It has never, however, been doubted, but that Committees possessed such a jurisdiction by the ancient law of parliament, which the 75th section of the Reform Act declared should remain in full force, except so far as it was repealed or altered by that act, or was inconsistent with its provisions. Under the old law, however, parties objecting before a Committee to the placing on the poll the votes of persons whose tenders had been refused by the returning officers, were always permitted to enter into every objection against their right to be so placed. The reason for this course was obvious, for no one could deliver in before a Committee, an objection to a vote which was not on the poll. A contrary course would put parties in a worse situation with regard to the bad votes which the returning officer had rejected, than those which he had received.

Mr. Curwood, in support of the reception of the tender.

On the first point he contended, that it was proved by the evidence, that the third question had been put to and answered in the affirmative by William Davis.

On the second point he contended, that before the Reform Act there was no doubt, but that Committees had jurisdiction to inquire into all the objections that existed to every vote, whether accepted or rejected by the returning officer. Since, however, the passing of the Reform Act, it had been considered as law, that objections which might have been made before the revising barrister, and had not been so, could not be listened to by a Committee at all. By the same implication that Committees considered their jurisdiction abolished over votes which had not been rejected or inserted in the register by the revising barristers, they must also consider their jurisdiction to be taken away over the votes of those persons who had answered in the affirmative the three questions prescribed by the Reform Act. It was the duty of the returning officer to put on the poll the votes of all persons who so answered. If they answered them falsely, they were liable to be convicted and punished for a misdemeanor; the only point therefore for the Committee to determine was, whether the voter answered the third question in the affirmative, for if he did so, his tender must be received as good.

The Chairman informed the counsel "that upon a candid revision of all the cases, they were not disposed to let the counsel go into the question of the change of occupation. The ground of their decision was, that if Davis at the poll had the third question put to him, and answered it, they considered, that the answer he gave would, if untrue, subject him to penalties. Although, however, they had decided that they would not go into the question of change of occupation, it was perfectly open to the counsel for the petitioner to show how Davis answered the question. All they had decided was, that his name having been on the register, and the third question having been put to him at the poll, they did

not think themselves at liberty to discuss the question of change of occupation between the register and the poll.

The resolution of the Committee was in these terms, "that no evidence upon the subject of the change of occupancy of the voter should be gone into."

Two witnesses were then produced on the part of the sitting member, who deposed to declarations by Davis before he went to the poll, that he should vote for the sitting member as well as Sir J. Elley.

Mr. Cockburn against the tender,

Argued, that no case, except the *Harwich*, had ever decided that the tender of a vote could be collected from circumstances, and that, even were the authority of the *Harwich case* admitted, the evidence here proved that Davis intended to vote for both the sitting member and Sir J. Elley.

Mr. Serjt. Heath, in support of the tender,

Contended, that the decision in the *Harwich case*, that it might be collected from circumstances for which candidate a person intended to tender his vote, was quite correct, and ought to be followed by the Committee, and that the preponderance of the evidence was, that Davis intended to vote for Sir John Elley alone.

The Committee determined that the tender was not to be put on the poll at all.

Charles Hodges's case.

March 27th. Declarations of a voter that he was to be paid for his services, and proof of subsequent canvassing, held sufficient proof of employ-

The voter was the assistant overseer of Windsor. Two declarations were proved by him that he was employed for Sir J. E. De Beauvoir, at the election, and was to have for his trouble 30*l.* at all events, and 60*l.* if Sir John succeeded. It was also proved that he had declined an offer of 50*l.* certain, for his services and the use of his house as a committee-room, during the election, for Sir John Elley's party, and that he was very active during the election in canvassing.

ment under 7 & 8 Geo. IV. c. 37, to invalidate his vote.

Mr. Serjt. Heath, against the vote,

Insisted that the voter was employed in some capacity for the purposes of the election, and therefore that his vote was bad under the provisions of the 7 & 8 Geo. IV. c. 37.

Mr. Cockburn, in support of the vote.

There is no sufficient proof of the employment. The mere declarations of a voter, that he was to receive a sum of money for his services, might have been used in jest, or for the purpose of enhancing the price of his own rooms and services, when an offer was made for them by the other party.

The Committee decided the vote to be bad.

William James Vowles's case.

March 27th, 28th. The paid agent of one candidate cannot vote for another candidate.

It was admitted that this voter was the paid agent at the election of Mr. Ramsbottom, the other member, but he was not employed by Sir John E. De Beauvoir.

Mr. Serjt. Heath, against the vote.

Wilcox's case (*i*) is decisive upon this case. The object of the 7 & 8 Geo. IV. was to prevent from voting any persons who, from being employed in the election and paid by the candidates, must, to a certain extent, be under their influence. Had it been the intention of the legislature that the vote should only be bad if given for the candidate by whom the person is employed, nothing would have been easier than for it to have expressed its intention. On the contrary, however, the words are general, and most properly so, for otherwise there would be an interchange between candidates not directly opposed to each other of their agents, and retainers, which would be utterly at variance with the spirit of the act, and in direct furtherance of the evil it was proposed to put an end to by it.

Mr. Cockburn, in support of the vote.

The case of an agent for one candidate voting for an-

(*i*) *Bedford case*, P. & K. 136.

other candidate, by whom he is not retained, does not come within the meaning of the act, and hardly within its words. The object of the act was to prevent candidates from obtaining, by the undue influence of a nominal employment, the votes of the poorer class of voters. It is obvious that the total disfranchisement of an agent, not paid by, and consequently not under the influence of, the candidate for whom he voted, could not have been contemplated by the framers of this act.

The Committee determined the vote to be bad.

William Long's case.

March 30th. The acceptance of and acting under a retainer at an election, by a solicitor, invalidates his vote, although no payment under it is proved.

The objection to this voter was, that he was a paid agent. Mr. Vowles, the principal agent for Mr. Ramsbottom, proved that he had called upon the voter, who was a solicitor, before the election, and told him he had called upon him by the desire of Mr. Ramsbottom, to say he hoped they should have his services in the same manner as before. The voter accepted this offer of employment. The witness could not tell whether the voter had been paid, or what he had received for his services, at the present election, as it was left to Mr. Ramsbottom himself to settle with him. Both this witness and the chairman of Mr. Ramsbottom's committee, deposed as to the general services of the voter in the usual mode of paid agents at elections, and a letter was produced, which had been written by him to Mr. Ramsbottom, on an occasion when he had been accidentally not summoned to attend a canvass, in these terms:—"Windsor, 22d Dec. 1834. Dear Sir, I understand that you are now canvassing, which I have heard by chance. As I did not receive any notice of the intention, I presume that my further services are not required. An answer by the bearer will much oblige, your's truly, Wm. Long. I sent my son, on hearing of the canvass, and he will remain till I get an answer to this." An explanation was immediately given by Mr. Vowles, at Mr. Rams-

bottom's request, to the voter, that the omission was quite accidental, and he subsequently took a part in the canvass.

Mr. Cockburn, against the vote.

It is not necessary, in such a case as this, to prove either an actual payment or promise of payment. If an action against a candidate would lie in a court of law, upon such a retainer of a solicitor, to recover the value of the services performed by him under it, there is a sufficient employment by a candidate for the purposes of the election, under a promise of payment, to invalidate the vote under the provisions of the 7 & 8 Geo. IV. c. 35. Could then the Committee doubt upon the evidence, that Mr. Long was retained as an agent, or could they, sitting as jurymen, if he had brought an action against Mr. Ramsbottom, and these facts had been proved before them, refuse to give him a due compensation for his services in the shape of damages? A solicitor was never engaged for a specific sum. If he was engaged, it was always understood that it was for his professional services, and he was entitled to be paid for the services he actually rendered. The general rule of law is, that if you engage a man in his ordinary trade or calling, you must pay him for his services in that trade or calling. One of the branches of a solicitor's business or calling was (as was well known) to be employed in elections, and solicitors had brought actions, and recovered the value of their services, as election agents. One half at least of the actions of assumpsit, that are brought in Westminster Hall, are upon implied promises, similar to the present, and the promise to the voter that he should be paid, which must be implied, when he was retained as an agent, coupled with his acts in that character, is quite sufficient to destroy his vote.

Mr. Serjt. Heath, in support of the vote.

The Act of the 7 & 8 Geo. IV. is restrictive of the franchise, and therefore ought to receive the strictest con-

struction. In order to bring a person within its provisions, it is necessary that "either during or within six months previous to, or fourteen days after an election, he must have been employed as a counsel, agent, attorney, &c., and at some time either before, during, or after such election, accepted or taken from any such candidate or candidates, or some other person, for or in consideration or with reference to such employment, some sum or sums of money, retaining fee, office, place, or employment, or some promise or security for some sum or sums of money, retaining fee, office, place, or employment." What evidence was there of the voter having received any sum of money, retaining fee, office, place, or employment, or any promise or security for them? It would be most contrary to the received doctrines of construction of statutes, to extend by implication the words of this restraining statute to implied promises. The words, indeed, obviously only refer to actual promises, and the words "retaining fee" being mentioned, shows that the legislature both contemplated that agents should be retained, and that it was only when they received a fee with their retainer that they were to be disfranchised. The fact is, that many solicitors are what is ordinarily called retained, and act as agents at elections from political principles, and without any expectation or view to remuneration. In the *Rochester case* (*k*), the vote of an agent, acting in this manner, had lately been established. The very letter which has been proved in this case, bears more the appearance of being written by a man acting from principle and attachment to his cause, than by a paid agent, who would naturally be thankful to receive his money, and to be spared the fatigue of accompanying every canvassing party.

The Chairman expressed the opinion of the Committee to be, "that Mr. Long was an agent under the statute,

(*k*) *Ante*, p. 120. *Prawl's case.*

and consequently that his vote was a bad vote, and must be struck off the poll."

Edward Williams's case.

March 31st. An objection cannot be taken before a Committee to a registered voter on the ground that he is in the employment of the post-office.

The voter was proved, by the production of his appointment from the post-office, to be a receiver of letters for the general post.

Mr. Cockburn against the vote.

By the 22 Geo. III. c. 41, s. 1, it is provided that no person employed under the postmaster-general, or any of his deputies, in receiving, collecting, or managing the revenue of the post-office, or any part thereof, shall be capable of giving his vote; and there is a further provision in the same section, that if any person thereby made incapable of voting, shall nevertheless presume to give his vote during the time he shall hold, or within twelve calendar months after he shall have ceased to hold any of the offices aforesaid, contrary to the true intent and meaning of the act, such votes shall be held null and void to all intents and purposes whatsoever. It is clear, therefore, under this statute, that the vote of a receiver for the post-office must be bad, and indeed the vote of a custom-house officer was determined to be so under it by the *Rochester* Committee (*l*) a few days ago. The only possible argument that can be urged in support of the vote, is, that as it was not disputed before the revising barrister, the Committee have no jurisdiction to inquire into it. As, however, the disqualification was not absolute but contingent upon the circumstance of the voter holding the office within twelve months of an election, and as the barrister could not tell whether an election would take place within the period between the 31st of the previous July and the 2nd of November in the following year, it could not be urged as an objection to his vote before the barrister. The particular time

(*l*) *George Wilkinson's case, ante*, p. 107.

during which the disqualification of post-office servants was to continue having been specified in the statute, clearly distinguishes this case from that of an infant, whose disability was at common law, and might be taken at any time.

Mr. Serjt. Heath in support of the vote.

This case cannot be distinguished from *Peter Davis's* (*m*). In either case if an objection had been taken, and it had been proved before the barrister in the terms of the 50th section of the Reform Act, "that such person was then (viz. the preceding 31st of July,) incapacitated by any law or statute from voting in the elections of members to serve in parliament, he must have expunged their names from the list. The Committee have determined, in *Peter Davis's case*, that as an objection might have been taken to him before the barrister, on the ground of infancy, which was a disqualification, both at common law and under the statute of Will. III., they had no power to examine into his case. What then is the distinction between that and the present case, where the disqualification arises under the statute of 22 Geo. III.? Even the argument arising from time fails in this case, for the infant may equally have attained his age before an election, as the post-office receiver may have vacated his office for a twelvemonth before the occurrence of it. The determinations of this and most preceding Committees have been, that their jurisdiction is confined to those cases where they act as a court of appeal from the decisions of the barrister, and those where the disqualification having arisen since the 31st of July, was not capable of being objected to before him, and it is to be hoped this Committee will not depart from those determinations.

The Committee determined "that they adhered to their determination in *Peter Davis's case*, and that the vote must remain on the poll."

(*m*) *Ante*, p. 160.

Richard George Barton's case.

March 31st. *Semble.* A member of the House will not be obliged to answer whether, or not, he employed a certain person as his agent.

This was the case of a solicitor, objected to as a paid agent. It was proved that he had stated himself to have been engaged for Mr. Ramsbottom. Mr. Ramsbottom was then called, who stated that he had not paid any body, but he declined to state whether he had engaged the voter as his agent or not, on the ground that if he answered that the voter was his agent he should be answerable for his acts (*n*). The question was not further pressed, but other evidence was produced of the voter's acting as an agent, and the vote was ultimately struck off.

John Lovegrove's case.

March 30th. The vote of a regular constable of a borough, who is employed at an election to keep the peace, and who refuses to take a sum of money paid to the town clerk, as a remuneration to him, is good, although before the petition was presented, he expressed his expectations of being paid.

There are two regular constables and four tything-men in the borough of Windsor. The voter was one of the constables, and had been so for two or three years. Both the constables and tything-men attended to keep order at the election, as it had been the custom for many years for them to do. It was proved, that before the election the voter had told one of his brother constables, who had been recently appointed, "that the attendance of all the constables would be required at the election, that they would be paid for their attendance, and that elections were the best things that happened for constables." It was also proved that during the election he had another conversation with the same constable, in which he told him, "that they would be paid a pound a day, he understood; that he had been paid for his attendance at a former election," (but he did not say how much,) and "that there was no doubt of their being paid, for it was always done at elections." Another conversation with the same constable, after the election, was also proved, in which the voter told him, "that he had not been paid yet, but that it was all right, he dared say; that there was no particular day appointed for payment, but that they must apply for it to

(*n*) See *Henry Cooper's case, New Sarum case*, P. & K. 263.

Mr. Secker the town clerk, and that they were not generally paid till a month or two after the election." The town clerk had, by order of the returning officer, and without any communication with the voter, sent in a bill to the chairman of each of the candidates' committees. These bills (two of which were produced) each of them contained, amongst other charges, a charge of six guineas for the services of the constables, and twelve guineas for those of the tything-men. The bill to Sir J. E. De Beauvoir's Committee was accompanied by a letter from the town clerk, containing an assurance that the money would be applied in the usual manner as theretofore. These bills had been paid by the candidates, and the town clerk had, on the 27th of February, after the petition had been presented, offered to pay the voter, but he had declined taking any thing, because, as he declared, he did not choose to give up his vote.

Mr. Cockburn against the vote.

From the usage of the borough, and indeed the common practice throughout the kingdom, independently of his own declaration, it cannot be doubted but that the voter fully expected remuneration for his services during the election. That remuneration was paid to the town clerk, who received it as the voter's agent, and the voter might have brought an action against him to recover it, if he had refused to pay it over to him. Could any one indeed believe that the voter would not have taken the remuneration had there not been a petition, or that he would not take it now directly that the Committee had finished their labours? Under these circumstances the voter must be held both to have been employed for the purposes of the election, and to have received money after the election, with reference to that employment from the candidates. This vote is therefore bad under the provisions of the 7 & 8 Geo. IV. c. 37, and must be struck off.

Mr. Serjt. Heath in support of the vote.

The act of the 7 & 8 Geo. IV. was never intended to apply to regular constables, who must attend and do their duty to preserve the public peace, whenever their services are necessary. A constable who refused to attend either at an election or at any other place where his presence was required, would be indictable for a misdemeanor, and be liable to be punished, on conviction, by fine and imprisonment. It could never have been in the contemplation of the framers of the act that a man should be deprived of his vote for doing his duty, or that he should gain his vote by subjecting himself to prosecution; and the exemption indeed in the 5th section of the act, of all voters from being called upon to serve as special constables, clearly shows that it was not intended to apply to ordinary constables. The law stands now upon the sensible footing, that if a voter chooses to accept the place of a special constable, who are a class generally paid and employed by the candidates, he loses his vote; but if he merely retains his ancient office, and performs the duties of it under the direction of the authorities of the place, he does not forfeit his rights as an elector.

If, however, there was no such employment of the voter for the purposes of the election as would deprive him of his vote under the provisions of the statute in question, still less was there any such acceptance or taking by him from either the candidates, or from any other person, of any money or promise of money as would subject him to that deprivation. The conversations which have been deposed to, prove only a vague and indefinite idea in the voter's mind that he should receive some gratuity. He had no legal demand (*o*)

(*o*) In *Wathen* v. *Sandys*, 2 Campb. 644, Mr. J. Lawrence said, "the sheriff is bound to preserve the peace of the county. If he is put to any extraordinary expense in this way let him represent the matter when he passes his accounts in the Exchequer, or directly to his

against the candidates, and the request which was made in the name of himself and the other constables, was made without any communication to him. When the town clerk received the money he received it as a stake-holder, to pay it to the voter if he would receive it, to return it to the candidates if the voter declined it. The voter has declined it, and the town clerk no longer holds it for him. If a man was to ask for and receive a bribe in my name, without my knowledge, and I was to refuse to receive it from that man when he offered it to me, surely no one would say my vote ought to be struck off for the bribe which another man took in my name? How then, upon the same principle, can this constable's vote be struck off, because another person has chosen to receive money in his name?

A case of this kind does not come within the meaning of the act, for even had the money been received by the voter as an equal part of it would have come from each of the three candidates, no influence in favour of any of them would consequently have been exercised over this vote; but it does not even come within the words of the act, for there was no employment of the voter for the purposes of the election, but for the purpose of keeping the peace; and even had there been such employment, there was no receipt by him of any thing whatever in reference to that employment.

The Committee determined the vote to be good.

James Morton's case.

March 30th. The vote of a regular constable, for whose

This was also the case of a constable who had attended at the election. It was proved, that before the election he had said, that "they (the constables) would be paid for their services;" that during the election he

Majesty's government. Any claims he may have for remuneration will thus be attended to, but he has no more right to recover such charges from a candidate at the election, than from any other individual in his bailiwick."

services during the election a remuneration has been paid to the town clerk which he has not received, is good, although he has expressed an intention of receiving that remuneration.

had said "it was a very fortunate thing that it took place when they were constables, as it was the only thing they were paid for;" and that after the election he had asked a brother constable to go with him to Secker's to receive their money, as Secker had received it; which the other constable declined, saying, however, he would go at a convenient opportunity.

The Chairman then asked the counsel for the sitting member, on whose part the objection was taken, how he proposed to distinguish this case from that of John Lovegrove, for that the Committee considered, either that he must prove a specific promise of payment to the voter, or else such an implied promise as an action at law would lie upon, as in the case of retaining a solicitor?

Mr. Cockburn

Contended that the general usage of the borough, coupled with the declared expectations of the voter, the receipt of the money by Mr. Secker on behalf of the voter, and the voter's expressed desire to receive it, were sufficient to show not only that the voter was employed under the expectation of being paid, but that he actually was paid through his agent.

The Chairman

Expressed his opinion that there must be either an express or implied promise of payment connected with the employment for the purposes of the election, in order to invalidate the vote.

Mr. Cockburn.

The strong distinction between this case and the former is, that the voter here did not repudiate the money paid by the candidate for his use. The town clerk still held the money as his agent and on his behalf. There therefore was, in this case, the actual payment to the voter's adopted agent, of money in respect of services during the election, which was wanted in *Lovegrove's case.* The statute indeed required no pro-

mise of payment at all, either previous to or connected with the employment. All that it required to destroy the vote was, that a man should be employed and should be paid, and this voter was both employed and paid.

The Chairman expressed the opinion of the Committee to be, that they could not distinguish this case from the preceding. Their resolution was, "that the vote was good."

John Secker's case.

March 31st. The vote of a town clerk who has been paid for his services during the election, is bad.

The objection taken to this vote was, "as being a clerk to the returning officer; having acted as such at the last election, and having since received fees for so doing."

The voter was the town clerk. He read the proclamation previous to the election, and during the polling he sat in the booth, in his gown, by the side of the mayor, as an assistant to him, and asked the questions permitted by the Reform Act, of the voters. At the close of the election he made out the indentures of return. He afterwards sent in, by order of the mayor, to each of the candidate's committee, the bill mentioned in *Lovegrove's case*, which contained, among other items, one of "expenses with return, £5; and another, town clerk's fees on return, £21," and which was paid by them all. It was proved that the voter had, in all these respects, acted in the same way as had been done by the town clerks of Windsor at preceding elections.

Mr. Cockburn against the vote.

There are only two points which can be considered under the 7 & 8 Geo. IV. c. 37: First, whether a person has, within the periods therein mentioned, been employed as counsel, agent, attorney, poll-clerk, flagman, *or in any other capacity*, for the purposes of the election. Secondly, whether the person so employed has, either before, during, or after the election, accepted or taken

from the candidate or candidates, or from any person whatever, for or in consideration of, or in reference to such employment, any sum or sums of money, retaining fee, office, place, or employment, or any promise or security for any sum or sums of money, retaining fee, office, place, or employment. As to the first point, it is quite clear that the voter was employed in the capacity of town clerk, for the purposes of the election. The statute does not require that the employment should be by any particular person, in order to bring the voter so employed within its provisions, and therefore it does not matter whether the employment is, as in this case, by the mayor, or, as in the case of more ordinary occurrence, by one of the candidates. The second point is equally clear, for the voter has received a sum of money from each of the candidates, in consideration of, and in reference to his services at the election. The voter must therefore be held to have come within the words of the act, and his vote must consequently be struck off the poll.

Mr. Serjt. Spankie in support of the vote.

The object of the act of 7 & 8 Geo. IV. was, as stated in its preamble, "to make further regulations for preventing corrupt practices at the election of members to serve in parliament, and for diminishing the expense of such elections." The specific corrupt practices which it was intended to prevent was the employment by candidates of numerous electors, nominally for the purposes of the election, but really for the purpose of obtaining an undue influence over their votes. In one borough, to my own knowledge, 300 persons were employed as flagmen. In counties, frequently all the attornies were retained. The large expenses incurred in this manner, which, in fact, were in the nature of bribery, were the expenses it was intended to diminish. The provisions of the act are in conformity with these objects, for the persons whom it enumerates as liable

to be deprived of their votes are, "counsel, agent, attorney, poll-clerk, and flagmen," all of whom, except the poll-clerk, are persons habitually employed by candidates.

The word "poll-clerk," which denotes a person employed by the returning officer to take the poll, is undoubtedly used by mistake in the statute, for the words "check-clerk," which denote a person employed by the candidates to watch the taking of the poll by the poll-clerks. It must, indeed, be considered to have been so determined by the Bedford Committee in *Wilcox's case* (*p*), when they struck off the vote of a check-clerk. It is necessary, however, that these persons should not only have been employed for the purposes of the election, but that they should also "have accepted or taken from any such candidate or candidates, or from any person whomsoever, for or in reference to such employment, some sum or sums of money," &c. The persons employed, therefore, being only such as are employed by candidates, and paid by the candidates or their agents, which the words "any person whomsoever," must be considered to denote, it is evident that the town-clerk, who is not employed by the candidates, is not a person liable to be affected by the provisions of this statute.

It is a rule of law, that where a statute enumerates several classes of persons, beginning with the highest class, and ending with the lowest, and then uses words of general reference, those general words must be considered as *ejusdem generis* with the last enumerated class. Thus, where the statute 13th of Eliz. cap. 10, used the words "deans, prebendaries, parsons, vicars, and others having spiritual promotion," it was held not to apply to bishops (*q*); and where the statute of 28 Hen. VI. cap. 12, provided against the stealing of records "by any clerk

(*p*) P. & K. 136.

(*q*) *Archbishop of Canterbury's case*, 2 Co. Rep. 46.

or other person," it was held not to extend to judges (r). A town-clerk is surely of a superior rank to a flagman, and cannot, therefore, be considered as a person included under the general words in this statute, of being employed "in any other capacity whatsoever," for the purposes of the election.

The whole, indeed, of the persons enumerated in this statute, are employed for the mere temporary purposes of the election: there is no mention whatever of any permanent officer in it. The intention of its framers was not to disqualify from voting persons acting in their usual functions, but persons appointed to a situation during, previous to, or directly after the election, in order to secure their voting in a particular manner. The town-clerk, however, is a permanent officer; he attended the election in his official character; in putting the questions, he was, in fact, the mere mouth-piece of the mayor; he had no fraction of a newly-imposed character for the purposes of the election, and he must be considered, therefore, to be excluded from the operation of an act intended to prevent the creation of temporary offices for temporary purposes. If then a town-clerk does not fall within the words of the act, he falls as little within the mischief arising from the creation of temporary offices, in order to influence votes, which it was the object of that act to prevent.

No argument can be drawn from the payment of the bill sent in by the town-clerk subsequently to the election; for that bill is, in truth, the bill of the mayor, and not of the town-clerk. One part of the charges in it are for fees for the services of the town-clerk, another for his making out the return. With respect to the fees, it is clear that the town-clerk had no legal demand whatever for them upon the candidates, and could recover

(r) Hawkins's P. C., book 1, cap. 47, s. 5.

nothing from them in a Court of Law (*s*). It is, in fact, a request for a gratuity from the candidates, and there was an acquiescence in that request by them, but had they refused to comply with it, no action at law could have been brought by the mayor against the candidates for those fees (*t*). With respect to the return, the mayor must have employed some attorney to make it out. The charges of preparing the indentures, the parchment on which they were written, and the stamp (*u*),

(*s*) The 7 & 8 Wm. III. c. 25, s. 2, provides, that "neither the sheriff, nor his under-sheriff in any county or city, nor the mayor, bailiff, constable, portreeve, or other officer or officers of any borough, town-corporate, or other place, to whom the execution of any writ, or precept for the purpose of electing members to serve in parliament doth belong or appertain, shall give, pay, receive, or take any fee, reward, or gratuity whatsoever, for the making out, receipt, delivery, return, or execution of any such writ or precept."

(*t*) The Report of the Select Committee of the House of Commons on Election Expenses, in 1834, after mentioning several boroughs in which fees or gratuities had been paid to town-clerks, proceeds to state: "It has been clearly proved, that town-clerks who have been in the practice of charging such large sums, have no legal claim. Some instances of these charges by town-clerks and returning officers against candidates, were brought in evidence before the Committee, and others were mentioned; but the Committee did not consider it necessary to inquire respecting more than two of them, as the long-continued practice in the old boroughs has been considered by these public officers sufficient to sanction these demands.

"In the case of the borough of Woodstock, the town-clerk admitted that he had no legal claim on the candidate, although he sent his bill to him for payment, and that he only had made a demand on the returning officer for professional services at the election. An action was commenced by the town-clerk against the returning officer, but a compromise put an end to the suit, and the right to charge for his services as town-clerk was never tried. Mr. Harrison expressed an opinion to the Committee, that the town-clerk had no claim, and could not have succeeded; and further, that under 7 & 8 Wm. and Mary, s. 6, he might be prosecuted for a penalty of £500 for such demand. The attention of candidates, who may have such demands made by town-clerks and others, against them, is directed to that act."—p. xxi. See also *Morris* v. *Burdett*, 1 Campb. 218; *Wathen* v. *Sandys*, 2 Campb. 640.

(*u*) In the Report of the Select Committee of the House of Commons on Election Expenses, in 1834, are the following passages: "It will appear by the returns, that a charge has been very generally made for

were legal charges which the town-clerk had a right to make on the mayor. When the town-clerk afterwards sent in a demand on, and received payment for, these charges from the candidates, those payments were, in fact, payments to the mayor, through the town-clerk's hands, as his agent. Until there was a settlement of accounts between the mayor and the town-clerk, the money so paid belonged to the mayor, and he might recover it from the town-clerk. It is true that the town-clerk might have had a right of action against the mayor for his fees and expenses in making out the indentures of the return, but he had no claim against the candidate. The payment, therefore, by the candidates to the mayor's agent, on his account, of the legal expenses of the returning officer, and of a voluntary gratuity to a town-clerk for his services, unconnected with any previous promise or engagement to that town-clerk, cannot be held to invalidate his vote.

This is the first attempt that has ever been made to invalidate the vote of a town-clerk, on these grounds,

receiving writ and making return, and part of these charges has been for a stamp on which the return is made, on the supposition that it is a document or agreement, and as such liable to an agreement or deed stamp of 30*s*. or 35*s*., under the 7th Hen. IV. c. 5 (*v*), for each part, as the case may be, the indentures or returns being made in duplicate.

"The practice has varied; many have made the returns on stamped and others on plain paper. It is, however, quite certain, that many returns of writs have been made without any stamp; and there is no instance of any objection having ever been taken at the Crown Office to the return, though made without any stamp. The opinion of Mr. Harrison is, that no member can be legally charged either for the stamp or for the return. Your Committee have no doubt on the subject; and members hereafter returned will know that they are not liable to any such charge.

"But it is desirable that such exemption from stamp duty should be specifically enacted, because, although there is no doubt, as before observed, of the validity of an unstamped return, as applicable to the Crown Office, yet reasonable doubts have been entertained, whether the person preparing such instrument of return, may not subject himself to the penalties imposed in respect of the execution of an unstamped deed."—p. xxiv.

(*v*) Sic in orig. sed quære 55 Geo. III. c. 184.

and it is to be hoped that the Committee will not construe the Act 7 & 8 Geo. IV. so as to have the effect of depriving the returning officers in corporate towns of the services of their permanent professional advisers, on occasions when their advice is most required.

The Committee determined the vote to be bad.

William Rowland Bragg's case.

March 31.

A wager on the result of an election by a voter with a person not a voter, destroys his vote.

The voter had on the Saturday before the nomination, which took place on the Monday, betted five sovereigns with another person, not a voter, that Sir J. E. De Beauvoir would beat Sir J. Elley. The same Saturday evening, after he had made the bet, the voter went to Sir John Elley's Committee with another voter, and they both withdrew the promises they had made them of their votes. On the Thursday after the election the voter received his five sovereigns from the person with whom he had betted.

Mr. Serjt. Heath against the vote.

The law in this case is clear. In *Allen* v. *Hearn* (*x*) Mr. Justice Buller says, "If you put the case of a wager between a voter and another person who is not a voter, it is a palpable bribe: it is a sum of money laid to procure a particular vote, and that case cannot be distinguished from the present. The bias is exactly the same; it is a pecuniary compensation. It is true, as the counsel for the plaintiff said, that the law leaves it to the voter to exercise his franchise or not, but it also requires him to be free till the last moment of giving or withholding his vote; which he cannot be, if he has laid such a wager as the present." The case of *Allen* v. *Hearn* itself was by no means so strong as the present, for there both parties were voters, had canvassed and taken decided parts on opposite sides, and after the wager was made, voted for their respective friends, and yet the Court of King's Bench refused to enforce the

(*x*) 1 T. R. 60.

wager against the losing party, "Because," as Lord Mansfield said "one of the principal foundations of this constitution depends upon the proper exercise of this franchise, that the election of members of parliament should be free, and particularly that every voter should be free from pecuniary interest in giving his vote. This is a wager in the form of it between two voters, and the event is the success of their respective candidates. The success, therefore, of either candidate is material, and from the moment the wager is laid, both parties are fettered. It is, therefore, laying them under a pecuniary influence; it is making each of them in the nature of a candidate." On the same principle, in *Jones* v. *Randall* (*y*), where a bet was laid on the result of a decision of the House of Lords, Lord Mansfield said, "If the present wager had been made with one of the judges, or one of the lords, it would have been a bribe." In the *Anonymous* case in *Lofft* (*z*) it is laid down, that "If I lay a wager of five guineas with A. that he does not vote for me, it is a bribe."

The facts of this case then being, that the voter in this case did not retain his party, as was done in *Allen* v. *Hearn*, but actually changed it after he had laid a wager against its success, can there be a doubt but that he voted under an undue influence, arising from his pecuniary interest in his wager? and if he did so, can it be disputed, in opposition to all the decided cases, that he was legally at least, if not morally, bribed for his vote, which must consequently be struck off the poll?

Mr. Cockburn, in support of the vote.

If a bet was laid for the purpose of procuring a vote, there is no doubt it would be a mere colour for bribery, and the vote thus procured would be bad. But there is no ground in this case for imputing any such motive to the person with whom the voter betted; much less is there

(*y*) 1 Cowp. 39. (*z*) Lofft, 502.

for supposing any such motive to have influenced the voter himself, whose conduct in going to Sir J. Elley's committee-room, and there declaring that he should abandon his promise, is most unlike the conduct of a man conscious of having taken a bribe. The Committee are the judges of the fact whether bribery was committed or not; and we confidently submit that there is no reason, either from the amount of the sum laid, or in any of the circumstances accompanying the wager, for them to presume that it was made for the purpose of influencing the vote.

The Committee determined the vote to be bad.

Edward Dyson's case.

April 2.

A wager by a voter with another voter destroys his vote.

The voter had, on the day that the writ came down, betted a sovereign with another voter that Sir John Elley would be elected; he had voted for Sir J. Elley, whom he had said he should support before he made the bet, and six or seven days after the election had paid his bet.

Mr. Cockburn against the vote.

The only difference between this case and that of Bragg is, that here the wager was made with another voter; but that fact can make no difference, for the mind of a voter must be equally biassed to vote in favour of the man whom the wager gives him an interest to support, whether that wager is made with another voter or a stranger.

Mr. Serjt. Heath in support of the vote.

The strong distinction between this and Bragg's case is, that here the voter had made up his mind before he made the wager; there, after the wager was made, the promise of the vote was retracted from the candidate against whom the voter had betted. Here the voter had given his suffrage in consequence of his previous opinions and declarations, and not in consequence of any bias as to the result of his wager; there the vote might

have been presumed to have been given in consequence of the wager, and under an undue influence resulting from it.

The Committee determined the vote to be bad.

John Hawkins's case.

March 31. An objection, on the ground of having laid a wager on the result of the election, may be gone into, although the objection given in the list is, that the voter had been bribed and received promise of reward.

The objections delivered in to this voter were,—first, that he had been bribed: secondly, that he had received entertainment and promise of reward. The objection proposed to be proved against him was, that he had made a wager on the result of the election before he voted. It was contended that this objection could not be gone into.

Mr. Cockburn in support of the vote.

In all the previous cases, the specific objection of having voted under the influence of a wager had been made. The statute 9 Geo. IV. c. 22, s. 14, directed that lists of the voters intended to be objected to should be given in to the Clerk of the House, giving in the said lists the several heads of objections, and distinguishing the same against the name of the voter intended to be objected to. Here, the objection of having voted under the influence of a wager was not distinguished against the name of the voter, and consequently cannot be entered upon.

The Chairman.—This is bribery under the statute.

Mr. Cockburn.—It is not such bribery as would expose any one to the 500*l.* penalty inflicted by that act.

The Chairman expressed the opinion of the Committee to be, "that this case might be entered into, but if the parties supporting the vote were taken by surprise, that the case should be postponed," which was accordingly done.

John Burnham's case.

April 1. The insignificance of the amount of a wager by a voter

The voter in this case had made two bets, both of them with persons not voters, on Sir J. Elley's success. One of them was for 5*s.*, which he had paid; another of them for a bottle of wine, which he had not yet paid.

Mr. Cockburn against the vote.

does not prevent its invalidating his vote.

This case comes precisely within the law laid down in *Allen* v. *Hearn* (*a*), and which has been adopted by the Committee in their resolutions on *Bragg's* and *Dyson's cases*. The amount of the wager cannot be considered, for the sum which may have no influence over the vote of a rich voter may have very considerable weight with one in inferior circumstances. Five shillings may be of equal importance to one man as 5*l.* to another. In the *Hertford case*(*b*) the distribution to voters of 5*s.* refreshment tickets during the election, and 5*s.* a head in money after it, was considered by the Committee as creating such an undue influence over their votes as to void the election.

The Committee expressed their opinion that the amount of the wager could make no difference, and that they had a strong impression against the validity of the vote.

Mr. Serjt. Spankie in support of the vote.

The question is, whether the voter in this case has been bribed or not. The amount, therefore, of the bet is the essential character of the act, for the law does not infer an act to be criminal without looking at the motive; and when you attempt to prove bribery, which is a corrupt contract, you must show a corrupt motive in the parties to that contract as you must do in a case of usury. There is no doubt, as was laid down in *Allen* v. *Hearn*, that bribery may be committed by means of a wager. In a wager, for instance, of 20*l.* with a voter, by an agent or partizan of a candidate, against that candidate's success, the corrupt motive would be evident, because it would be a mere pretence for giving that voter an interest to vote on a particular side. It may be shown thus, that a wager is a mere vehicle of corruption. But where the whole of the circumstances dis-

(*a*) 1 T. R. 56. (*b*) P. & K. 541.

prove the existence of any corrupt motive, no court of law would hold a mere sporting wager to be bribery. Mr. J. Buller, in *Allen* v. *Hearn*, decided the wager there to amount to bribery, because the vote must, after it was made, have been biassed by it. What possible bias could, however, such jocular trifling bets as those in question have over the mind of any independent man? The common usage in low life is, to call upon a man to bet in favour of whatever opinion he supports, and if he refuses the wager he is not believed to be sincere in the opinion. The bet is the result of the voter's supporting a particular candidate; his support and voting for that candidate is not in consequence of his bet. What security would there be for any candidate if every after-dinner and public-house wager was to be raked up to disfranchise his supporters? Such a case, indeed, as this, were it tried at law, would be met with the old and approved maxim of de minimis non curat lex.

If, however, this vote is to be held bad on account of bribery by means of a wager, the voter himself must be liable to be prosecuted for the 500*l.* penalty under the Bribery Act; but would any jury convict him of bribery upon proof of two such wagers as are brought forward in this case? It is only, however, on the dictum of Mr. J. Buller, that a wager amounts to bribery, that this voter is sought to be disfranchised. But what is the definition of bribery in the Bribery Act? The 7th section provides, that if any voter shall "ask, receive, or take any money, or other reward, by way of gift, loan or other device, or agree or contract for any money, gift, office, employment, or other reward whatsoever, to give his vote, or to refuse or forbear to give his vote in any such election, or if any person by himself, or any person employed by him, doth or shall, by any gift or reward, or by any promise, agreement or security for any gift or reward, corrupt or procure any person or persons to give

his or their vote or votes, or to forbear to give his or their vote or votes in any such election, such person so offending in any of the cases aforesaid, shall, for every such offence, forfeit the sum of 500*l.*" Had then this voter *asked, received, or taken* any money or other reward by way of gift or other device to give his vote, or to forbear to give his vote at the election? Had he *agreed or contracted* for any money, gift, office, or employment, or other reward whatsoever, to give his vote, or to forbear to give his vote at the election? If, however, he has not done any of these things, he has not been guilty of receiving a bribe, and could not be convicted of such an offence.

A contract to constitute bribery must be a contract for a man to give or forbear to give his vote. A wager may be evidence from which such a contract may be inferred, but does not constitute such a contract. It is necessary, besides, that the contract should be not only in order that the voter should give his vote, but before he gives it, for it was decided in *Lord Huntingtower* v. *Gardiner*(c), that the receipt by a voter, after he has voted, of what is called vote money, for having given his vote in a particular way, did not amount to bribery, because it was not connected with any antecedent promise. [By the Committee.—Here was a bet which was an antecedent promise.] It was a promise that the voter should receive something on the happening of a given event, not that he should receive it on his voting in a particular way. He would have won his bet and been entitled to his money had Sir John Elley been successful, whether he himself had voted for him or not. The wagers did not either in terms or in fact amount to bribery.

The sole question with regard to wagers is, whether or not they are so made as to exercise an undue influence over the mind; if they are so large, and made under such circumstances as to induce a rea-

(c) 1 B. & C. 297.

sonable presumption that they do so, they are evidence of a corrupt contract. If, as in the present case, they are so trifling as to obviate all ideas of the kind, they constitute no such evidence, and the vote must remain unimpeached.

The Committee determined the vote to be bad.

April 6. Mr. Cockburn, on the part of the sitting member, stated that he was not prepared to go on any further with the scrutiny, and that he was therefore bound to admit that the return must be set aside; but he submitted that the Committee ought only to declare the election void, unless the petitioner, who had been served with a notice to prove his qualification under the standing orders, was prepared to show that he was duly qualified.

Mr. Serjt. Spankie

Contended, that with regard to proof of qualification, the same rules applied both to those of petitioners and those of sitting members, and that the Committee ought, in conformity with their previous resolution on the petitioner's attack of the sitting members' qualification, now call upon the sitting members to disprove the qualification of the petitioner.

The Committee determined "that it was the duty of the sitting member to prove the negative of the petitioner's qualification."

Mr. Cockburn then applied for time to procure evidence of the petitioner's disqualification.

The Committee determined that no time should be given.

The Committee then came to the resolutions, which they reported to the House, "That Sir John Edward De Beauvoir was not duly elected; that Sir John Elley was duly elected, and ought to have been returned; that

neither the petitions nor the opposition to them were frivolous or vexatious; that they had altered the poll by striking off George Braine, &c. (fifteen names) as having no right to vote, and they had added to the poll the names of Henry George and Robert Batt, as having a right to vote."

CASE VIII.

TOWN AND COUNTY OF THE TOWN OF DROGHEDA.

The Committee was appointed on the 2nd of March, 1835, and consisted of the following Members:

Lord Hotham, M. P. for Leominster, *Chairman.*

Henry Combe Crompton, Esq. M. P. for Thirsk.
Thomas Peere Williams, Esq. M. P. for Great Marlow.
James Power, Esq. M. P. for Wexford County.
William Edward Powell, Esq. M. P. for Cardiganshire.
Sir Roger Griesley, Bt. M.P. for South Derbyshire.
Thomas Frewin Turner, Esq. M.P. for South Lancashire.
Hon. Geo. Rice Rice Trevor, M. P. for Carmarthenshire.
Thomas Bish, Esq. M. P. for Leominster.
Edward Divett, Esq. M.P. for Exeter.
John Fielden, Esq. M. P. for Oldham.

Petitioners:—Electors in the interest of the Hon. Randal Plunket.

Sitting Member:—Andrew Carew O'Dwyer, Esq.

Counsel for the Petitioners:—Mr. Harrison and Mr. Joy.

Agents for the Petitioners:—Mr. Baker, Spring Gardens; and Mr. Pentland, Dublin.

Counsel for the Sitting Member:—Mr. O'Dwyer, in person the first day, and afterwards Mr. Austin.

Agent for the Sitting Member:—Mr. Terence Dolan, Dublin.

THE petition was entitled, "The Petition of James M'Cartney and Thomas Apperson, and of the several persons whose names are hereunto subscribed, Electors of the *county of the town* of Drogheda, on behalf of

themselves and others, claiming to have had a right to vote at the election, which took place at the said *town* of Drogheda on the 12th of January last, for members to serve in parliament for the said place, and who still have, and claim to have, a right to vote for members to serve in parliament for the said *town and county of the town* of Drogheda;" and stated, "That a vacancy having occurred in the representation for the *county of the town* of Drogheda, by the dissolution of the late parliament, the usual writ was in due form issued and directed to the sheriffs of the said county of the town, &c." And charged, that the sitting member had not a sufficient qualification, at the time of the election, to entitle him to sit in parliament. It likewise alleged intimidation, which it became unnecessary to inquire into, and prayed that the election might be declared void.

Petitioners against the return of a member for a *town and county of a town*, but who only described themselves as electors of the *county of the town* on behalf of themselves and others who had a right to vote at the last election for the said place, and also still have, and claim to have, a right to vote for members for the said *town and county of a*

The case having been opened by Mr. Harrison, and the Clerk of the Crown Office having produced the return for Drogheda, it appeared that the writ was directed to the sheriffs of the *town and county of the town* of Drogheda. The sitting member then objected to the petitioners being allowed to proceed any further in the case.

Mr. O'Dwyer.—This is the petition of certain electors of the *county of the town of Drogheda,* and by the writ and the return to it it appears that the election was for the *town and county of the town* of Drogheda. There is, therefore, a fatal variance in the petitioner's own description of themselves, from what it ought to be, in order to qualify them to petition against this election. Their only right to question the election at all, is given them by the 9th Geo. IV. c. 22, the fourth section of which enacts, that "no petition shall be proceeded upon unless the same, at the time it is presented to the House, shall be subscribed by some person or persons claiming therein to have had a right to vote at *the election to which the same shall relate,*" &c. To authorise

town, allowed to proceed with their petition.

the Committee, therefore, to go into this case, the petitioners must show that their petition is subscribed, according to the terms of the fourth section, by persons claiming to have had a right to vote at the election for the *town and county of the town* of Drogheda: for else the petition will not agree with the return of the writ. The *town and county of the town* of Drogheda, and the *county of the town* of Drogheda, are forms of expression which convey very different meanings; and it by no means follows, that the electors for *the county of the town* of Drogheda, are the same as those for *the town and county of the town* of Drogheda. The objection is one of substance, and not of form. In the *Nottingham case* (*a*) a similar objection prevailed. In that case the petitioners described themselves as persons having a right to vote for the *town and county of the town* of Nottingham, and the petition likewise stated that the election was for the town and county of the town of Nottingham. In the writ and return to it, the election was stated to be for the *town* of Nottingham; and the Committee decided that the petition was not conformable to the provisions of 28 G. III. c. 52. s. 1. (which was the statute then in force with regard to the presentation of election petitions;) and that the petitioners should not be allowed to proceed with their case. The provisions of the first section of the 28 Geo. III. c. 52. are, upon the point in question, identical with those of the fourth section of the 9th Geo. IV. c. 22; and the Committee, if they do not allow this objection to prevail, will consequently make a decision directly opposed to that of the *Nottingham* Committee.

Mr. Joy for the petitioners.

The *Nottingham case* has been completely overruled by the late decision in the *Montgomery case* (*b*). Even, however, if it could be considered any authority in a case similarly circumstanced, it is inapplicable to the present case, as there is a sufficient allegation in the pe-

(*a*) Cor. & Dan. 197. (*b*) P. & K. 162.

tition that the petitioners are electors for the *town and county of the town* of Drogheda. It states them to be persons "who still have and claim to have a right to vote for members to serve in parliament for the said *town and county of the town* of Drogheda," and reading the whole of the clause together, it is manifest the Committee cannot entertain such a frivolous objection.

Mr. O'Dwyer in reply.

The persons "who still have and claim to have a right to vote for members to serve in parliament for the said *town and county of the town of Drogheda*" are the persons *on behalf* of whom the subscribing petitioners present their petition, and not the subscribing petitioners, who no where give themselves that description. It is easy to call objections of this kind frivolous, but it must be remembered that the Committee are bound to proceed as a court of law, in which the greatest attention is always paid to forms, especially when, as in this case, they are specially enjoined by act of parliament. "It is of great importance," said Lord Tenterden, in *Wright* v. *Clements*(c), "to follow the ancient form of precedents; for if we depart from them in one instance, one deviation will naturally lead to another, and by degrees we shall lose that certainty which it is the great object of our system of law to preserve."

The sitting member having been heard in reply, the Committee determined that the petitioners should be allowed to proceed with their case.

It appeared by the evidence that on the sitting member being required at the hustings to take and subscribe the qualification oath, he described his qualification as arising out of part of the lands of Cullenswood, town land of Cullenswood, parish of St. Peter's, barony of Upper Cross, and county of Dublin. On his return

(c) 3 B. & A. 507.

being questioned, the sitting member, in the particular of his qualification, delivered to the Clerk of the House of Commons, in pursuance of the resolutions of the 21st November 1717, and also in that given in at the table of the House, under the 33 Geo. II. c. 20, described his qualification as consisting of a rent-charge of 300*l.* a year for his life, issuing out of certain lands in the parish of St. Peter, in the *county of the city* of Dublin.

In the particular of qualification delivered in to the Clerk of the House, under the standing orders of the 21st November, 1717, the property was stated to be in the *county of the city* of Dublin. The evidence went to show the property to be in the *county of* Dublin:—Held, a fatal variance.

Mr. O'Dwyer, after the last decision of the Committee, was called upon to produce the deed by which the rent-charge was granted to him. The deed having been produced and read, it appeared that the lands out of which the rent-charge issued, although named precisely as in the particular delivered to the Clerk of the House, were described as being in the parish of St. Peter, *in the county* of Dublin; on which,

Mr. Joy, for the petitioners, objected that the deed did not correspond with the particular given into the House, and was calculated to mislead.

Mr. O'Dwyer called a witness, who proved that the parish of St. Peter was partly in the county of Dublin, and partly in the county of the city of Dublin; that the parish church was in the latter county, and that he attended a vestry meeting in the city under a local act of parliament, in respect of lands held in the county, and had appealed against a church rate in respect of such lands, before the Recorder of the city; but on cross-examination he admitted that no part of the lands out of which the rent-charge issued were within the county of the city. Another witness was also called, who gave similar evidence as to the situation of the parish.

Mr. O'Dwyer

Contended that it was impossible to be misled by the alleged inaccuracy of the description of his qualification,

(*d*) Not reported.

and that the variance, if it could be considered one at all, was a mere clerical error, and immaterial. In *Rex* v. *Lisle*(*d*) a clergyman, who had lands in a part of a parish which ran into two counties, was held entitled to vote for the treasurer of that county in which the parish church was situated. Consequently the description in the deed could not be considered as a substantial variance from that in the particular.

Mr. Joy, in reply.

By the standing orders of the House, "the person whose qualification is expressly objected to in any petition relating to his election, shall, within fifteen days after the petition received, give to the Clerk of the House of Commons a paper, signed by himself, containing a rental or particular of the lands, tenements, and hereditaments, whereof he makes out his qualification, of which any person concerned may have a copy; that of such lands, tenements and hereditaments, whereby the party hath not been in possession for three years before the election, he shall also insert in the same paper, from what person, and by what conveyance or act in law, he claims and derives the same, and also the consideration, if any, paid, and the names and places of abode of the witnesses to such conveyance and payment." Besides these standing orders, and in order to render the statute of Queen Anne more effectual, it was enacted by the 33 Geo. II. c. 20, "That every person (except as hereinafter excepted) who shall be elected a member of the House of Commons, shall, before he presumes to vote in the House of Commons, or sit there during any debate in the said House of Commons, after their Speaker is chosen, produce and deliver in to the Clerk of the said House, at the table in the middle of the said House, and whilst the House is there duly sitting, a paper or account, signed by every such member, containing the name or names of the parish, town-

ship, or precincts, or of the several parishes, townships, or precincts, and also of the county, or of the several counties in which the lands, tenements, or hereditaments do lie, whereby he makes out his qualification, declaring the same to be of the annual value of £600 above reprizes, if a knight of a shire, and of the annual value of £300 above reprizes, if a citizen, burgess, or baron of the cinque ports, and shall also at the same time take and subscribe the oath" required by the Act.

The standing orders and the Act not having been complied with, by setting out the property in the precise terms thereby required, we are entitled to say that this is a substantial variance and calculated to mislead. All the opportunity the petitioners have of investigating the qualification of any sitting member being that afforded by the particular given in to the Clerk of the House, the resolutions and the act of parliament would become a nullity, if such a misdescription was not held to be a fatal variance. The petitioners are not bound to search any other places for the property of the sitting member, than those mentioned in his particular. On the particular the sitting member states the title on which he relies for his qualification, and by that he is bound. No such property exists as that mentioned in this particular, and therefore the Committee must come to the resolution, that this is a substantial variance, and their ultimate decision must consequently be against the sitting member.

The Committee resolved, "That it is the opinion of this Committee, that the sitting member has no qualification corresponding with the particulars delivered in by him to the Clerk of the House of Commons, in compliance with the standing orders of the House."

The Committee having adjourned to Monday the 6th of April, Mr. O'Dwyer, in the evening of the 4th, sent the following letter or notice to the petitioner's agent.

Drogheda Election Petition, 1835.

In Parliament.

In the matter of the petition of James M'Cartney and others, complaining of an undue election and return.

I send you herewith a copy of a qualification which I have this day delivered to the Clerk of the House of Commons, upon which I rely as my qualification; and I withdraw, and do not rely upon that formerly delivered in by me, the same containing a clerical error. — Dated 4th April, 1835.

Andw. C. O'Dwyer.

To the Petitioners, and
to Thos. Baker, Esq., their agent.

Held, that a withdrawal of the particular of qualification delivered in at the table of the House, and the substitution of a new one, is a waiver of the particular originally delivered in, and that a sitting member cannot substitute a new qualification for that originally-given in by him to the Clerk of the House of Commons.

Mr. O'Dwyer likewise, in the afternoon of the 4th, and after the Committee had adjourned, delivered in a fresh particular to the Clerk of the House, in which the property out of which his rent-charge issued, was correctly described as being in the county of Dublin, and not in the county of the city of Dublin, as in the former particular. The substituted particular also contained some alterations of the names of the tenants on the property and the description of the parcels.

On the Committee assembling on the morning of the 6th of April, Mr. Joy stated that he had received the communication of the change of qualification from Mr. O'Dwyer, stating his abandonment of his former qualification, and contended that he could not, after the Committee, on Saturday, had decided against the old qualification, be allowed to substitute a new one, and that he could not now defend his seat on either. If the qualification he had formerly insisted on was good, he had withdrawn it, and if it were bad, he had no right to substitute another. If this were to be allowed, the moment a Committee have decided the qualification of a sitting member to be bad, he has nothing to do but to substi-

tute another, and so *de die in diem* to start a fresh title as often as the preceding one has been found defective. Besides, no notice was given till late on the Saturday night of any such substitution; the names of the parcels of the property were changed, and the names of the tenants altered. How are we to know whether this is the same property as that comprised in the first particular? How can we produce evidence to prove that it is not? In the *Dover* (*e*) *case*, indeed, a sitting member who had not delivered in a particular of his qualification in compliance with the standing order, but had furnished to the petitioners a statement of the qualification on which he meant to rely, different from that sworn to by him at the election, within a week previous to the sitting of the Committee, was held to be duly elected; but that case depended on special circumstances; a near relation of the sitting member having been dangerously ill, and it being impossible for him, on that account, to deliver in the particular within the time specified in the standing order. An application was afterwards made by him to the House, to be allowed leave to put in his particular after the usual period, which was refused, because the Committee to whom the petition would be referred might, on account of those special circumstances, have put an equitable construction on the standing order. But that case is very different from the present, in which there are no such special circumstances as in the *Dover case*. The Committee have decided, that what the sitting member calls a clerical error, is not one, and they would be stultifying themselves if they allowed this substituted qualification to be investigated.

Mr. Austin, for the sitting member, was, after some discussion, allowed to be heard on the point, whether the notice was a waiver of the first particular, and also to show that it did not amount to a withdrawal of the

(*e*) P. & K. 412.

qualification delivered in to the Clerk of the House of Commons.

Mr. Austin then argued, that the meaning of this letter or notice amounted to this, "I send you a new particular, and not that I put in a new qualification." The decision of the Committee on the Saturday preceding (the 4th) did not touch this case. All that the Committee then decided was, that the deed produced by the sitting member, as the instrument under which he claimed his qualification, did not quadrate with the particular delivered in to the House. This then is no abandonment of the qualification, it is only a withdrawal of the old particular, which was faulty in respect of a clerical error, in describing the parcels as being situate in the county of the city of Dublin, instead of the county of Dublin, and a substitution of a new and amended particular in its place. This new particular has only been made to correspond with the deeds by which the rent-charge was originally granted, and cannot be treated as a withdrawal of the qualification. Suppose no letter had accompanied the particular, it could not have been contended that the particular itself referred to a new qualification. The letter and the particular should be read together, and should be construed according to the manifest intention of the parties. For what purpose was the letter sent? merely to put the petitioners on their guard, to give them notice that the sitting member had withdrawn his old particular, by putting an amended one in its place. To give this any other construction would be acting against the maxim of law in the construction of written instruments, *Qui hæret in literâ, hæret in cortice.* Suppose a person gave a receipt, if a mistake in it were shown, the party giving it would not be bound by it. The standing orders of the House require no such certainty as this or the former particular profess to give. No description of counties, parishes, or precincts is required; all that is required is, a paper, signed by

himself, of the rental or particular of the lands, &c. whereof he makes his qualification; and the withdrawal of this, and the substitution of another in its place, can never be considered as a withdrawal of the qualification. The qualification the sitting member originally started with, he stands by now. All that was intended by him was, a mere change of the particular, and the question of a change of qualification does not arise.

The Committee, without hearing Mr. Joy, in reply, decided, "That the letter delivered by the sitting member's agent to the agent of the petitioners, signed by himself, was a complete waiver of the qualification delivered by him to the Clerk of the House of Commons. The Committee now therefore come to the point, that it was necessary for the sitting member to show that he was entitled to put in an amended qualification."

Mr. O'Dwyer then contended, that no qualification was required for Irish members. Mr. Joy was then heard in answer to him, after which the Committee resolved, "That it was the opinion of the Committee that the sitting member was not at liberty to substitute an amended particular of his qualification, in the place of the one he had previously delivered in to the Clerk of the House of Commons, upon which the decision of the Committee has already been taken, and which the sitting member himself had subsequently withdrawn.

"That Andrew Carew O'Dwyer, Esq. was not duly elected, and that the election for the borough of Drogheda was a void election.

"That neither the petition nor the opposition to it were frivolous or vexatious."

CASE IX.

TOWN AND COUNTY OF THE TOWN OF DROGHEDA.

The Committee was ballotted for on the 23rd June, 1835, and consisted of the following Gentlemen:

The Right Hon. Henry Goulburn, M. P. for Cambridge University, *(Chairman.)*

Elliot Thomas Yorke, Esq. M. P. for Cambridgeshire.

Joseph Neald, Esq. M. P. for Chippenham.

Sir Charles Knightley, Bart. M. P. for South Northamptonshire.

Hon. J. Craven Westenra, M.P. for King's County.

Horace Twiss, Esq. M. P. for Bridport.

Sir Robert Harry Inglis, Bart. M. P. for Oxford University.

William Bolling, Esq. M. P. for Bolton.

Thomas Wood, Esq. M. P. for Breconshire.

Lord Viscount Grimston, M. P. for Hertfordshire.

Hon. William Gordon, M. P. for Aberdeenshire.

Petitioners:—Electors in the interest of Mr. Plunket.
Sitting Member:—Andrew Carew O'Dwyer, Esq.
Counsel for the Petitioners:—Mr. Harrison, Mr. Joy, and Mr. Thesiger.
Agent:—Mr. Baker.
Counsel for the sitting Member:—Mr. Austin.
Agent:—Mr. Dolan.

THE petitioners in this case described themselves as "Electors of the county of the town of Drogheda, on behalf of themselves and others claiming to have had a right to vote at the last election which took place at

the said town of Drogheda, on the 21st, 22nd, 23rd, and 24th days of April last past, for a member to serve in parliament for the said county, and who did vote at the said election;" and charged that the sitting member had not a sufficient estate to entitle him to sit in parliament; and that in consequence of such want of qualification they, as well publicly as privately, caused the several electors of the county of the town of Drogheda to be cautioned against voting for the sitting member; and upon the hustings caused a printed notice to such effect to be handed to each of the electors in the interest of the sitting member, previous to voting. The petition contained other allegations which it became unnecessary to enter into.

The numbers on the poll were, for the sitting member 320, for Mr. Plunkett 131.

An objection similar to that taken in the preceding case(*a*), that it did not appear on the face of the petition that the petitioners were persons entitled to present it, was then taken. Mr. Austin, in support of the objection, cited the *Middlesex*(*b*), *Carmarthenshire*(*c*), and *Nottingham cases*(*d*), and Rogers on Elections.

Mr. Harrison, for the petitioners, cited the *Montgomery case*(*e*).

The Committee decided that the objection had not been sustained.

A rent-charge issuing out of an estate in Ireland for three lives, renewable for ever, will not confer a qualification to sit in parliament.

It appeared by the evidence, that the rent-charge on which the sitting member grounded his qualification was the same as mentioned in the preceding case, but that the estate out of which the rent-charge issued was held by Mr. Dolan, the grantor, on a lease for three lives, renewable for ever, and that one of the lives had dropped. It also appeared that a part of the property on which the rent-charge was secured, (the Richmond Hill es-

(*a*) *Ante*, p. 200.
(*b*) 1 Peck. Introd. p. xxi.
(*c*) 1 Peck. 289.
(*d*) Cor. & Dan. 198.
(*e*) P. &. K. 163.

tate,) was held for a term of forty-eight years, and that a reversionary lease of one hundred years, if three lives should so long live, had been made to Mr. Dolan of that property, but that the remaining part of the property in which the annuity was charged, (the Mount Pleasant estate,) was of the yearly value of 572*l.* 15*s.* 5*d.* There were a few trifling incumbrances riding over the whole of the property charged with the rent-charge; but it was admitted by the counsel for the petitioners that the property was of ample value to cover all the charges upon it. It further appeared, that in the interval between the decision of the Committee in the preceding case, and before the election in April, Mr. Dolan executed a release, by which he released the annuity from any lien he might have upon it for payment of the consideration money, but he did not release Mr. O'Dwyer from the bond, which was the security given for the consideration, nor from the interest payable on the bond.

It was also proved, that notices were, on the 21st of April and the subsequent days, up to the close of the poll, posted about in different parts of the town, and were to the following effect:

"Drogheda Election.—Notice to Electors.

"Whereas the late election and return of A. C. O'Dwyer, Esq. has been declared void and set aside, because he, the said A. C. O'Dwyer, had no legal or bonâ fide qualification, in respect of property, to entitle him to be returned to sit or vote in parliament for the county of the town of Drogheda; and we are advised that the same want of legal qualification of the said Andrew Carew O'Dwyer still continues, Notice is hereby given to the electors, that any elector who may give or tender his vote to the said Andrew Carew O'Dwyer, at the present election, will throw away the same, for the several reasons before stated; and this notice will be relied upon on any future proceedings. Dated this

twenty-first day of April, one thousand eight hundred and thirty-five, and signed by us on behalf of ourselves and others, electors of the county of the town of Drogheda.

Ralph Eccleston,
Anthony Bassiere, and
William Jesson."

It was also proved that copies of this notice were served upon the electors on their coming to the poll, and that the fact of the notices having been posted up was notorious to every person in the town.

Mr. Harrison and Mr. Thesiger for the petitioners.

There are two points in this case which present themselves to the consideration of the Committee; first, whether the sitting member has a qualification; and next, whether, if he has not one, notice has been given of his not being properly qualified to a sufficient number of the electors to turn the scale of votes in favour of Mr. Plunket. The objection which we make to the sitting member's title is not of a technical description; the legislature has defined what amount and quality of landed estate is to be the qualification of a member of parliament; and in order to facilitate a party who objects to the qualification of any member, the standing orders of the 21st November, 1717, were made in furtherance of the statute of the 9 Anne, c. 5, which directs that the member should deliver in a particular of his qualification, and that of such lands, &c. of which he has not been in possession for three years before the election; he is to insert in such particular from what person, and by what conveyance he derives title, and also the consideration, if any, paid. The sitting member, by the particular given in by him in pursuance of these orders, claims by virtue of this indenture of the 9th day of January, 1835, to have a rent-charge of 300*l.* a year for his own life, granted in consideration of

2500*l.*, to him by Mr. Dolan. This is assuming that Mr. Dolan has the fee of the estate out of which the annuity issues. The 9 Anne, c. 5, the statute which defines the qualification, enacts, "That no person shall be capable to sit or vote as a member of the House of Commons for any county, city, borough, or cinque port within that part of Great Britain called England, the dominion of Wales, and town of Berwick-upon-Tweed, who shall not have an estate, freehold or copyhold, for his own life, or for some greater estate either in law or in equity, to and for his own use and benefit, of or in lands, tenements or hereditaments, over and above what will satisfy and clear all incumbrances that may affect the same, of the respective annual value hereafter limited, viz. the annual value of 600*l.*, above reprizes, for every knight of a shire; and the annual value of 300*l.*, above reprizes, for every citizen, burgess, or baron of the cinque ports; and that if any person who shall be elected or returned to serve in parliament as a knight of a shire, or as a citizen, burgess, or baron of the cinque ports, shall not, at the time of such election and return, be seised of or entitled to such an estate in lands, tenements, or hereditaments, as for such knight, or for such citizen, burgess, or baron respectively, is hereinbefore required or limited, such election and return shall be void."

In order to render the statute of Anne more effectual, the 33 Geo. II. c. 20, was passed, the second section of which enacts, "that all members (not particularly excepted,) before they take their seats, are to deliver in, at the table of the House, a signed schedule of their respective qualifications, and if the requisitions of the statute are not complied with by any member his election is void."

The 42 Geo. III. c. 106, extends the statute of Anne, and the 33 Geo. II. to Ireland, so that Irish and English members are put precisely on the same footing in

this respect. Now in this case, even if the grantor of the rent-charge had an estate in fee, or for his own life, in the lands out of which it issues, (neither of which he had,) the sitting member would not acquire from that rent-charge an estate of the annual value of 300*l.* above reprizes. This rent-charge is, in consideration of 2500*l.*, secured by a bond. This bond, if not released, would be a lien on the rent-charge. To prevent this, and yet keep the debt unextinguished, the grantor releases the rent-charge from the lien, but does not release the bond. The object of the parties has evidently been to concoct a colourable qualification, and this is the machinery by which it is attempted to maintain that the sitting member has a qualification, and at the same time to secure the grantor from the possibility of being called on to pay any part of the rent-charge. But this scheme has not quite effected its object, for the consideration-money of 2500*l.* necessarily carries interest, to which the release does not extend, and consequently there is no exoneration of the rent-charge from the reprize of this interest. Mr. Dolan might, if he had thought fit, have given the sitting member a qualification bonâ fide, without any consideration whatever, but as he has not chosen to do so, it is too late now for the sitting member, when his qualification is found out to be merely colourable, to put his case on that ground. There was evidently no intention on either side, when this attempt at giving a qualification was concocted, that the grantor should pay the annuity, or the sitting member the consideration.

If, however, the Committee should be against us on this point, we contend that the sitting member has not, in law or equity, an estate for his own life, or a greater estate in this rent-charge. The Richmond Hill property may be put out of the question, as the leases of it are not renewable for ever; the title, therefore, rests on the Mount Pleasant property, which is of sufficient value to secure the annuity. Mr. Dolan has only an estate for two

lives in this last property, which is evidently a less estate than for his own life; it is, therefore, impossible for him to give the sitting member an estate out of these lands for his life. In the eye of the law, an estate for a man's own life is a greater estate than that for the life of another; and if a thousand other lives were added, still in legal contemplation an estate for a man's own life is a greater estate. But it will be said that there is a peculiarity in the tenure of Irish property of this description, which makes it distinguishable from other cases of the same sort,—that the lives may be perpetually renewed, and that the estate must continue for ever. It may be admitted that in some cases, if there is no very great laches on the part of the tenant, he might, by an application to a Court of Equity, compel a renewal, but it is not a thing which he can, under all circumstances, enforce as a matter of course, and without he can do that, he can never be said to have an equitable perpetuity, or estate in fee.

In *Murray* v. *Bateman*(*f*) the British House of Lords reversed the decision of the Irish Chancellor, and refused to allow the tenant to renew. In that case the tenant had permitted all the lives to drop, and had been guilty of gross negligence. This decision alarmed the holders of this sort of property in Ireland, and occasioned the passing of the 19th and 20th Geo. III. c. 3, commonly called the Tenantry Act, by which it is enacted, " that Courts of Equity, upon an adequate compensation being made, shall relieve such tenants and their assigns against such lapse of time, if no circumstance of fraud be proved against such tenants and their assigns, unless it shall be proved to the satisfaction of such Courts that the landlords or lessors, or persons entitled to receive such fines, had demanded such fines from such tenants or their assigns, and that the same had been refused or

(*f*) 5 Bro. P. C. 20.

neglected to be paid within a reasonable time after such demand; and if a landlord cannot discover his tenant, notice for two months, in the London and Dublin Gazettes, is to be considered a demand within the Act. All then that this Act does for the tenant, is, that if there be no laches or fraud on the tenant's part, or no demand on the part of the landlord, a Court of Equity is to claim a renewal. But if the lessee is under no obligation to renew, he may think the lease an incumbrance, and give it up. Where then would be the sitting member's rent-charge if Mr. Dolan refused to renew? It is by no means a matter of course for a tenant to obtain a new lease. If Mr. Dolan were to be guilty of laches, or on notice being given to renew, he were to delay to come in; or if he were to be guilty of any fraud, the landlord could not be bound to renew. That this is the law is proved by a variety of cases, *Magrath* v. *Lord Muskerry* (*g*), *Jessop* v. *King* (*h*), *Jackson* v. *Sanders* (*i*), *Lord Mountnorris* v. *White* (*k*). It depends on a variety of circumstances, whether the tenant shall be allowed to renew. In *Magrath* v. *Lord Muskerry*, the tenant had been guilty of laches in not applying for a renewal until all the lives had dropped, the Court of Chancery in Ireland refused therefore to direct a renewal, and this decree was afterwards affirmed, on appeal, by the House of Lords in Ireland. In *Jessop* v. *King*, although in that case a renewal was, under the circumstances, decreed, the Lord Chancellor said, that if there be fraud, or a demand and refusal, or a demand and neglect to renew in reasonable time, the covenant is forfeited. In *Jackson* v. *Sanders*, the Court held, that when a demand was made on the 6th of October, a tender on the 20th March following was not a tender within a reasonable time, the tenant having had intimation for two

(*g*) 1 Ridgw. P. C. 469.
(*h*) 2 Ball & B. 81.
(*i*) 2 Dow. P. C. 437.
(*k*) Ibid. 461.

years previously that payment of the fines was expected, and having neglected to pay them, and accordingly refused to decree a renewal of the lease. In *Lord Mountnorris* v. *White* there had been repeated applications on the part of the landlord to renew, particularly in 1788 and 1796, and the tenant made no offer to renew until 1804 or 1805, and on an appeal to the House of Lords here, the decision of the Court of Exchequer in Ireland was reversed, and it was held, that the tenant's right to renew was forfeited. These cases all show that the interest of the tenant is any thing but a perpetual interest. It may be evaded by a variety of circumstances. As soon as the lives come to a determination the estate immediately falls, and the very circumstance of having to apply for a renewal, shows the precarious nature of the tenure. Who can tell when the three lives in the present case will drop, or whether the sitting member will not outlive them all? Who can tell whether Mr. Dolan will choose to renew? If he does not, where is the perpetuity? The interest which Mr. Dolan has is not an *estate* in equity, it is only a right, upon complying with the requisitions of the Tenantry Act, to apply to a Court of Equity. Mr. Dolan may not comply with those requisitions, and in that case a Court of Equity would never assist him. If an ejectment to recover the fee was brought against Mr. Dolan, as tenant in possession, he would be obliged to give his landlord notice of the action brought, which proves that he cannot possibly have any inheritance in him. The Committee should not speculate on what may happen. Is the estate indefeasible, *must* it last for ever, is the test to apply to this case. If it *must not*, on its inception, last for ever, it is nothing more than an estate for three lives, and consequently less than for the life of the sitting member. The very circumstance of the reversion being always in the landlord, shows that Mr. Dolan can never have a perpetuity or quasi fee in the estate. This very point

came before the *Cork County* Committee the present session. There were certainly other grounds on which that Committee might have determined against the sitting member, but it was thought that their decision was much guided by their opinion, that an estate of this nature did not confer a qualification to sit in parliament.

The remaining point for the Committee to consider is, whether sufficient notice of Mr. O'Dwyer's want of qualification was not given at the election, to oblige them to seat Mr. Plunket? In Rogers on Elections, p. 209, it is laid down, "that if a voter, after he has had notice of the ineligibility of the candidate, chooses to vote for that candidate, his vote is thrown away." In the *Fife case* (*l*), where the freeholders had been apprized of General Skene's incapacity, arising from his holding the office of baggage-master and inspector of the roads, the Committee decided, that the electors who had voted for him had thrown away their votes, and seated the petitioner, who had a minority on the poll. In the *Cockermouth case* (*m*), where the member returned was under age; in the *Leominster case* (*n*), where the member returned, (Mr. Bish,) was a contractor under government; and in the *first Leominster case* (*o*), where the member returned, Sir William Fairlie, had no qualification, in point of property—Committees all came to similar determinations, and seated candidates with a very inferior number of votes. The Committee in the *Cork case* (*p*), seated Mr. Longfield in the same way. Our case is much stronger than the *Cork case;* for there no notices were given until the poll. Here the notices were posted about the town, and the fact of the sitting member having no qualification, was notorious to every person in Drogheda. We therefore trust that the

(*l*) 1 Lud. 455, in notis.
(*m*) 18 Journals, 673.
(*n*) Rogers on Elections, 264.
(*o*) Corb. & Dan. 1.
(*p*) Post.

Committee will declare that Mr. Plunket is entitled to the seat.

Mr. Austin for the sitting member.

It is an invariable rule, that in attacking the qualification of a sitting member, the onus of proving that he is not properly qualified lies on the petitioner, as Mr. Harrison argued in the *Coventry case* (*q*), and the release of the annuity from the bond is the only point in which that case can be considered to differ from the present. There are three points in this case; 1st, the sufficiency of the grantor's estate; 2nd, the bona fides of the grantor; and 3rd, the effect of the notices.

First, at the time of the election the sitting member had, under the statute of Anne, such an estate in equity as entitles him to sit in parliament. All that is required by that statute is, that the member shall have an estate, freehold or copyhold, for his own life or for some greater estate, either in law or equity, of 300*l.* a year in value above reprizes. Mr. O'Dwyer has an estate for his life in equity. Leaseholds of this description are freehold interests; they are capable of limitation as freeholds; the equitable interest may be dealt with in the same way as the legal estate might be; the member might from time to time compel a renewal of the lease out of which his qualification is derived, or if such leases were renewed a lessee would in equity be considered to hold as a trustee for the annuitant, so that he has to all intents and purposes an estate in equity for his own life. That he would be entitled to the benefit of any renewal by the lessee is proved by the case of *Fitzroy* v. *Howard* (*r*), where the husband of a devisee of leaseholds for lives, having renewed some leases, on the death of his wife without issue, he was declared to be a trustee of those renewed leases for the benefit of the person to whom in that event they were given over. *Campbell* v.

(*q*) P. & K. 335. (*r*) 3 Russ. 320.

Sandys (*s*), is a case of a similar description, and where the like equity prevailed. All interests in equity will pass by a mere agreement in writing as effectually as by a legal conveyance, and the covenant to renew contained in the lease to Dolan, is such an agreement as a court of equity would act upon; the right to renew is an interest vendible, chargeable, may be assets, and would descend to the heir; *Paine* v. *Meller* (*t*). The covenant in this lease is to renew for ever, and if the question were to be decided according to English law, it would be an estate in perpetuity.

It is not necessary, however, to press the case so far; for by the local equity of Ireland, established by the declaratory statute, commonly called the Tenantry Act (*u*), where a lease contains a covenant of this description, the tenant has a perpetual right of renewal, in other words, a perpetuity which nothing short of refusal on his part to renew, or fraud, can defeat. The statute of Anne requiring a freehold qualification, must, when applied to estates in Ireland, mean a freehold according to the custom of the country. The 41st Geo. III. c. 101, s. 23, after reciting the statute of 9 Anne, c. 5, enacts, that the provisions of that statute shall extend to Ireland. The 59th Geo. III. c. 37, which was passed for the purpose of putting Scotch property on a par in this respect with English and Irish, after reciting the statutes of 9 Anne, 33 Geo. II., and 41 Geo. III., proceeds thus: "And whereas it is just and expedient that the provisions of the last-recited act, so far as relates to the possession of lands, tenements, and hereditaments, within Ireland, as a qualification to serve in parliament for places within England and Wales, should be extended to lands, tenements, and hereditaments within Scotland;" and it then enacts, that the lands whereby any person shall make out his qualification to serve as a member

(*s*) 1 Schoales & Lefroy, 292, 294.

(*t*) 6 Ves. 352.

(*u*) 19 & 20 Geo. III. c. 30.

for any place in England or Ireland, may lie either in England, Scotland, or Ireland. There is, however, no such thing in Scotland as a freehold estate; it is clear, therefore, that the Act must, when applied to Scotch property, mean such property there as is equivalent to a freehold in England; and if such is the true construction of the Act, putting Scotch on an equal footing with English property, the true construction of the Act, putting Irish property on the same footing, must be similar.

The first case to be cited for the purpose of showing the perpetual nature of these interests in Ireland, is *Sweet* v. *Anderson* (*v*), where James, Duke of Ormond, being tenant for life of the lands of Kilcross, in the reign of Will. III., obtained an Act of Parliament to enable him to raise fines by making leases for lives renewable for ever, for payment of his debts. In pursuance of this act, the lands of Kilcross were leased for three lives at a certain rent, and the duke covenanted, that as often as any of the lives for which the said premises were thereby granted, or any of the lives which should be inserted in any other lease then after to be made should happen to fail, the duke, his heirs or assigns, would, from time to time and at all times for ever then after, at the request of the lessee, his heirs or assigns, and upon payment of all the rents of the said premises that should be then in arrear, and advancing and paying by way of fine, within twelve calendar months next after the death of each life, the sum of 16*l.* 13*s.* 4*d.*, renew and make a new lease of the said lands to the said lessee, his heirs and assigns, at the yearly rent and with the covenants contained in the said lease; and the like covenant for renewal for such two lives as should be then in being, and also for one other life, to be added in the place of such of the three lives as should from time to time happen to fail. At the time of the lease, the lessee had two nephews of the same

(*v*) 2 Bro. P. C. 256.

name, one of whom was one of the *cestui qui vies;* of these nephews one left Ireland in 1697, the other was admitted to be living at the time of the suit; and it was uncertain which of the two nephews was the *cestui qui vie* included in the lease. The duke sold the reversion in fee to one Sweet. The lessee having died, his devisee, within twelve calendar months after his death, applied for a renewal, and at the same time tendered the fine of 16*l.* 13*s.* 4*d.*, which Sweet refused, insisting, that, since one of the *cestuis qui vies* had been absent from Ireland ever since 1697, and therefore must be presumed to be dead, and no tender of a fine for renewal had been made within twelve calendar months after his absence, the benefit of renewal was forfeited. A bill having been filed, and an issue having been directed, and a verdict found that the nephew who left Ireland in 1697, was the *cestui qui vie* included in the lease, the case came on to be heard in the Irish Exchequer, before Lord Chief Baron Gilbert and the rest of the Barons. The plaintiff was ordered to amend his bill by inserting a tender of the fine for the second life, and that the cause should stand over. The plaintiff having, accordingly, amended his bill and tendered the defendant three several sums of 16*l.* 13*s.* 4*d.* for fines, (the nephew having been absent about twenty-one years,) which was a fine for each seventh year, and interest for each sum respectively, the cause was again heard, when the Court ordered the defendant to renew on the plaintiff paying the three fines with interest, and also another fine, due on the death of the lessee. Against this decree the defendant appealed to the House of Lords, who affirmed the decree. On this case Mr. Finlay, in his treatise(*x*), observes, " that it is remarkable for the establishment of septennial fines, at a time when Sir Jeffery Gilbert filled the office of Lord Chief Baron in Ireland. Before this case, the introduction of this

(*x*) P. 14.

tenure had been long and extensively prevalent in Ireland, not limited in its commencement, as some would limit it, to the period of the Revolution, but with more reason, according to the view of Mr. Ridgway, originating about the period of 1643, and not limited in its extent by the domestic policy of any single great landholder, but more probably deriving its extension from a similar policy in all other great landholders, especially the absentee proprietors, who must have been influenced by the same motives as the Duke of Ormond to adopt the arrangements which, in a country so poor, was so well adaped to create and encourage a respectable and improving tenantry." He then goes on to observe on the nature of their interests. "Landed property in Ireland being thus circumstanced, their leases were considered as perpetuities, and marriage settlements, mortgages, and other securities grounded upon them as perpetuities."

The next case to which attention will be drawn is the case of *Bateman* v. *Murray* (*y*), decided by Lord Lifford in 1765, where all three lives had been allowed to drop without any application having been made for a renewal till a considerable time after the last life had dropped; and Lord Lifford, in decreeing a renewal of the leases in that case, observes, as to the decision of Lord Chief Baron Gilbert, in *Sweet* v. *Anderson*, that he only inverted the mode of making satisfaction for lapse of time by the rule he adopted respecting septennial fines, and considered a decree of a renewal as quite a matter of course. Against this decision the defendant appealed to the House of Lords in England, who reversed the decree and overturned the old equity of the country. This decision and the doctrine laid down by the House of Lords on that occasion, caused an alarm in Ireland, to quiet which the Tenantry Act was passed, which declares that the rights of tenants shall

(*y*) 1 Ridgway's C. in P. 187; S. C. 5 Bro. P. C. 20.

not be defeated by mere neglect, where no fraud was intended.

The Tenantry Act, it is evident by its preamble, was only declaratory of what the law was before it passed: it says, "Whereas great part of the lands in this kingdom are held under leases for lives, with covenants for perpetual renewals upon payment of certain fines therein respectively mentioned for each renewal. And whereas, from various accidents and causes, such tenants, and those deriving under them, have frequently neglected to pay or tender such fines within the time prescribed by such contract, after the fall of such lives respectively. And whereas many such leases are settled to make provisions for families and creditors, most of whom must be utterly ruined if advantage be taken of such neglect, which will occasion much confusion and distress in the kingdom. And whereas it has been for a long time a received opinion in this kingdom, to which some decisions of courts of equity, and declarations of judges, have given countenance, that courts of equity would in such cases relieve against the lapse of time, upon giving an adequate compensation to the persons to whom such fines were payable, or their representatives, and to the end that such interests may not be defeated by a mere neglect, where no fraud appears to have been intended, upon making full satisfaction to the lessors or those claiming under them, be it enacted," &c. This preamble proves beyond doubt what was the law before the passing of the Act, and that these interests are perpetuities. The first case decided since that Act was the case of *Boyle* v. *Lysaght* (*z*), which terminated in an appeal to the Irish House of Lords in 1787; which shows what was the opinion of Lord Lifford, then the Lord Chancellor of Ireland, on this subject. In his judgment in that case, he says (*a*), "It may be proper, not merely to speak on

(*z*) Ridgway's Par. Cas. 384; Ver. & Scriv. 135.

(*a*) Ridgway's Par. Cas. 402; Ver. & Scriv. 143.

the case now before us, but also to explain the history of this tenure in this kingdom, and the determinations concerning it in our courts. How long it has prevailed I do not pretend to say. It might have been first introduced in the north, but in the south I believe it has prevailed since the time of the great Earl of Ormond, who, in order to people his vast estates in that part of the kingdom, and to invite a respectable and improving tenantry, introduced this tenure; it had the effect he desired, and in the nature of the thing these leases have a tendency to create a respectable and improving tenantry. It obtained, till it had acquired these tenants, great respect and very valuable properties, inasmuch as they were considered to have a perpetual interest. In this I am warranted, not only by the express words of the statute, but by what it recites to have been decided by courts of equity, and countenanced by the declaration of judges. These leases, then, were considered as perpetual interests, and upon that principle they gained ground, and became a fund for settlements of every kind, for mortgages, and other securities for money. If a man had one of these leases there would have been no more doubt of lending him money than if he had the fee. Tenants, like other men, are subject to that misfortune attendant on human nature, of neglecting their own affairs. I believe, experience and observation will justify the remark, that mankind in general are extremely negligent about what concerns themselves; partly by business of another kind, partly by pleasure, they are diverted from looking into their own private affairs and paying them that attention which they require. Hence it happened, that tenants neglected to make renewals upon the fall of lives, and were guilty of great laches. The landlords, therefore, brought ejectments, and the tenants resorted to courts of equity for relief; and courts of equity, where the breach was made up by an adequate compensation, thought they were

entitled to relief. But still considerable difficulties arose in estimating what should be a compensation, until that great man, Lord Chief Baron Gilbert, who presided in the Court of Exchequer in this kingdom, struck out the compensation of septennial fines, considering a life as equal to seven years, upon the idea of the act, which says, that if a man is not heard of for seven years, he is to be presumed dead. That compensation is a fine for every seven years, with interest. Accordingly, in the case of *Anderson* v. *Sweet*, 1717, he decreed a renewal to the tenant upon payment of septennial fines and interest, and this decree was affirmed by the Lords in 1722. Courts of equity were very glad to lay hold of that rule, and in every case that came before them afterwards, they held that the tenant was entitled to a renewal upon these terms, except in cases of fraud or dereliction. There is a long string of cases that came into public discussion in the courts, some with, some without negative claims, for in some of these leases was inserted an express proviso, that if the tenant neglected to renew within a certain time, he should not have a right to call upon the landlord for a renewal. But yet, notwithstanding that clause, courts of equity adopted the same rule in that very extraordinary case, as coming under the idea of compensation; and in that case, which made so much noise, of *Murray* v. *Bateman*, which came before me in 1776, I had a great number of those cases laid before me, beside those which had been cited at the bar. I directed a search to be made, and I found that they abounded in the courts. I also inquired of the judges, of the ablest men and oldest practitioners in the Hall, and they agreed that the uniform practice was to decree renewals in all cases except where there was fraud or dereliction on the part of the tenant. Some of those persons are now dead, Lord Annaly, Mr. Justice Robinson, Mr. Malone, Chief Justice Paterson, and others, who were

perfectly acquainted with the determinations that had been made; and they said, moreover, that the cases which had been passed *sub silentio* were *innumerable.* In consequence of this general circumstance, I formed my opinion, notwithstanding any ideas upon the subject that I might have brought with me from England, where this kind of tenure is not known; accordingly I decreed a renewal. I did consider that there was a *local* equity, and, as I have often heard it called, the *old equity of the kingdom.* We all know the fate of that decree—upon an appeal to the House of Lords *in England* it was reversed. I am satisfied the principles of it were not understood there. They were unacquainted with that *local equity*, and that it was the intent originally of the parties to convey a perpetuity; all this, I say, was unknown to them, they had no such tenures, no such determinations in that kingdom. Some very respectable and eminent men, who concurred in that reversal, with whom I have since held conversation, have told me that they have altered and changed their opinion. They said, that according to *English* principles, the reversal was right, but that taking into consideration the *usage in Ireland*, and all the circumstances of the case, it was wrong. The voice of the people, expressing a dissatisfaction with that determination of the Lords, and a general alarm in consequence, brought the point before the Legislature, and the *old equity* was revived by the act 19 & 20 Geo. III. c. 30. After that reversal and before the act, there were one or two cases came before me in which I refused to give relief; they were cases of strong neglect, all the lives were gone. I considered the determination of the great court of *dernier resort* (as the House of Lords of Great Britain then was) as declaratory of the law of the land, and that I was not at liberty to set up my own opinion against it, and make a decree which was sure to be reversed; and, indeed, it would have been cruel to the party. *By the Act the old*

equity was revived. Indeed, though it had never been made, after the supreme jurisdiction had been restored to this House, I would have no hesitation in deciding as I had done in *Murray* v. *Bateman.*"

In Lord Redesdale's judgment in *Lemon* v. *Napper* (*b*), that learned judge, in speaking of the Tenantry Act, says, "The Act is declaratory as well as enacting, and I take it not to have declared any thing against the cases which had been determined. It does not say that such decisions were against principle, and should not have been made: that would not have been consistent with the body of the act; and if such had been the intent of the legislature, the proviso "that nothing therein contained should in any sort affect any suit then depending," would have been absurd. In the subsequent part of his judgment in the same case, he adds, that "The courts, in all cases of contracts for estates in land, have been in the habit of relieving, where the party from his own neglect had suffered a lapse of time, and from that or other circumstances, could not maintain an action to recover damages at law, and even where nothing exists to prevent his suing at law; so many things are necessary to enable him to recover at law, that the formalities alone render it very inconvenient and hazardous so to proceed, nor could, in many cases, the legal remedy be adequate to the demands of justice. Courts of equity have therefore enforced contracts specifically where no action for damages could be maintained; for at law, the party plaintiff must have strictly performed his part, and the inconvenience of insisting upon that in all cases was sufficient to require the interference of courts of equity. They dispense with that which would make compliance with what the law requires, oppressive; and in various cases of such contracts they are in the constant habit of relieving the man who has acted fairly though negligently." He then says, as to the observa

(*b*) 2 Scho. & Lef. 682.

of time in making the application, " the mere object of fixing a time is to preserve the tenure and the remedies for the rent and the fine where it is more than nominal, and if those are preserved, the substance of the contract is performed, though the letter of the contract may not be preserved. The meaning of the parties to these contracts is to secure a continuance of the tenure, and rent, and payment of the fines, and to prevent a conversion of the tenure by enjoyment without renewal into a fee-farm." He further says, " in the original contract for such leases the object on the part of the landlord is the enjoyment of a clear rent, and in many cases an occasional fine, and on the part of the tenant, the contract is for the perpetual enjoyment of the land, and an encouragement to make such expensive improvements as could not be expected to be made, but with a view to such continued enjoyment." Even should all the lives drop, the estate would still subsist in equity, the lives themselves being only the media whereby to calculate the rent.

So absolute is the power of the tenant of an estate of this nature, that he is not liable for waste, and has, to all intents and purposes, the same power over it as if he had the fee. In *Calvert* v. *Gason* (*c*), Lord Redesdale refused to allow an injunction against such a tenant, and the judgment of that learned lord, if any further authority were wanting, shows, that the opinion which he held in that case is in unison with that given by him in *Lennon* v. *Napper*. " When I first sat in this court," says his lordship, " I was disposed to think that injunctions ought to be granted in such cases as the present, but upon inquiry I found, that interests under leases for lives, with covenants for perpetual renewals, have been constantly considered in this country as perpetuities. In the case of copyholds in England, the freehold re-

(*c*) 2 Sch. & Lefr. 561.

mains in the lord, and the copyhold tenant is considered as tenant at will, according to the custom of the manor, and therefore he has no right beyond that of a mere tenant at will, but such as the custom gives him. In the case of leases for lives, renewable for ever, *the whole inheritance* is bound by the contract for renewal, and without special reservation the lessor has no interest beyond the performance of the conditions of this tenure."

An estate of this nature is a fee simple absolute, subject to a condition for payment of rent, or, in other words, it is like a fee held under a fee farm rent. If, when the lives dropped, the landlord were to get possession by ejectment, a court of equity would declare him a trustee for the tenant, and if the tenant were to apply for an injunction, while the ejectment was pending, the landlord would be restrained from proceeding any further with the action. It has been said, that the tenant is not bound to renew, and that the rent-charge of the sitting member might fail through his obstinacy or laches; but this is not the case, for the tenant would be bound to renew, without the sitting member being called upon to contribute one farthing towards the expense of renewal. In *Moody* v. *Matthews* (*d*) an annuity had been granted for life, with a covenant for further assurance, out of tithes, which were leased for years; the lessee afterwards renewed the lease, married, and died. Her husband administered, and renewed with his own money. Sir W. Grant held, that the annuity was a charge on the renewed term generally, and that the annuitant was not bound to contribute to the expense of the renewal; and Sir Edward Sugden, since he went over to Ireland, has decided the same point in the same way. But admitting, for argument's sake, that the estate of the sitting member might be discontinued, still he has a freehold now, and that is all that the statute requires; otherwise, no per-

(*d*) 7 Ves. 173.

son in England, Ireland, or Scotland, has a qualification; for they may all possibly forfeit their estates. According, indeed, to the doctrine put forwards on the other side, there can be no such thing as a perpetuity in an estate, because it may, by possibility, be forfeited.

Mr. Twiss put the case of the grantor of the annuity parting with the land.

Mr. Austin. He would be entitled to have the lease renewed, at the expense of the estate, in whatsoever hands it might come.

The next point is the bona fides of the transaction. It is perfectly legal to procure a qualification for the express purpose of sitting in parliament, and no consideration need be given for the qualification to vest the estate in the grantee. But it even might be admitted, that both grantor and grantee have been guilty of a fraud on the act of parliament. *The offence against the statute, if any, has been completed* by the sitting member swearing to the qualification so given. Were the grantor to sue on the bond he could not recover; nor could he, if he were to apply to a court of equity, obtain relief, the rule of law being *in pari delicto melior est conditio defendentis*. The only question the Committee have to inquire into, is, the legal effect of the transaction. With the mode in which the qualification was acquired they have nothing to do. All that the statute requires is, that the member should have an estate of freehold or copyhold for his own life, or some greater estate of the value of 300*l.* a year at the time of the election. If he had, no matter how he got it, the statute is satisfied, and the Committee cannot decide against him. Nor is there, in this case, any occasion to show that the bond is not a lien on the rent-charge. The bond merely gives the grantor a remedy against the other property of the grantee, and is a mode of securing the consideration money for the annuity, by giving the

grantor a remedy in a court of law. It is not a lien on the estate, but creates a mere debt. The general rule of equity, that the vendor has a lien on the estate for the purchase-money so long as it remains unpaid, is a rule grounded on the presumption that he did not intend to part with his estate, without adequate security for the consideration. Any evidence, therefore, which sufficiently rebuts that presumption, will discharge the lien, even supposing that it ever existed. Here, such a presumption is rebutted; for the lien has been expressly released. The grantor could not hold back the rent in payment of his bond; he must bring an action on his bond, if the money due on it be not paid, and till that be done, and a judgment obtained, he can have no right to retain any portion of the rent-charge. Mr. Dolan's intention was to give Mr. O'Dwyer a clear 300*l.* a year, to enable him to sit in parliament. In answer to the question, "Was it your intention to give him a clear annuity to enable him to have a seat in parliament," Mr. Dolan said "Yes." The deed of release clearly shows that the substance of the agreement was, to enable Mr. O'Dwyer to sit in parliament; and as Mr. Dolan has expressly discharged the annuity from the lien, if any there ever was, for the purchase-money, nothing can be said against the title on this score. If the conveyance had been made in fraud of the law, all the cases on the subject show that the title would have been good. If, as in this case, the transaction was bonâ fide, the estate has been released from the lien, and the title is equally good.

But should the Committee be against the sitting member on either of the other points, they ought not to seat Mr. Plunket, but declare the election void. The doctrine is preposterous, that a candidate who suspects his opponent's title, can, by handing round a few notices at the poll, seat himself against the wishes of the majority of the electors. There is a great difference in

the election of corporators and members of parliament. In the former case, all the parties are present in court, or are presumed to be so in law; in the case of an election of members of parliament, the candidate may, as in this case, come from a distance, the electors may, and generally do know nothing whatever about his qualification; and it is impossible for them, on such short notice, to be able to find another person to represent their opinions. None of the cases cited on the other side go the length that is attempted here. The *Fife case*(*e*) was the case of an officer under government elected in opposition to the provisions of an Act (*f*), which says that no such officer should be *elected*. In the second *Leominster case*(*g*), a contractor had been elected in opposition to the provisions of the 22 Geo. III. c. 45, which provides that no contractor shall be elected. In both these cases the fact of the candidate's incapacity was notorious, and perhaps the rule might have been applied to them without doing any great hardship. In the first *Leominster case* (*h*) the point was admitted without any discussion; had it been questioned, the decision must have been different. But the present case is not within the principle of the first *Leominster case*, even if that case can be considered law; for there is no proof here that the electors read the notices, and even if they had, these notices do not contain an unqualified allegation that Mr. O'Dwyer had no title. All that is said is, "We are advised he has no qualification." All then that this notice could be taken to mean is, that in the opinion of Mr. Plunket, or his agent, the title of Mr. O'Dwyer might possibly be questioned. The notice should have contained an unqualified statement that the sitting member had no qualification; any thing short of that could only be in-

(*e*) 1 Lud. 455.
(*f*) 6 Anne, c. 7, s. 25.
(*g*) Rogers on Elections, Appendix, p. 264.
(*h*) Corb. & Dan. 1.

tended to mislead, for the electors are not bound to take the statement of the opposite party to be true for any thing they know, and for any thing, according to the wording of these notices, that Mr. Plunket or his agents knew. Mr. O'Dwyer had a good qualification, and the Committee should require the most absolute negative of title in these notices, before they extract so monstrous a doctrine as to seat a candidate with so few electors as his supporters as Mr. Plunket.

Mr. Thesiger having been heard in reply to the new cases cited by Mr. Austin, which he contended did not establish the case of the sitting member,

The Committee decided "That Andrew Carew O'Dwyer, Esq. was not duly elected; that the Hon. Randal Plunket was duly elected, and ought to have been returned; and that neither the petition, nor the opposition to it, were frivolous or vexatious."

CASE X.

CITY OF WORCESTER.

The Committee were appointed on the 31st March, 1835, and consisted of the following Gentlemen:

John Evelyn Denison, Esq. M. P. for Nottinghamshire. *(Chairman.)*

William Dowdeswell, Esq. M. P. for Tewkesbury.
Lord Charles Fitzroy, M. P. for Bury St. Edmunds.
Hon. Arthur Duncombe, M. P. for East Retford.
Sir John Walter Pollen, Bart., M. P. for Andover.
Hon. Francis William Grant, M. P. for Elginshire and Nairnshire.
Richard Alsager, Esq. M. P. for East Surrey.
Robert Rushbrooke, Esq. M. P. for West Suffolk.
Thomas Sheppard, Esq. M. P. for Frome.
Philip Henry Howard, Esq. M. P. for Carlisle.
James Emmerson Tennant, Esq. M. P. for Belfast.

Petitioners:—Electors in the interest of Colonel Davies.
Sitting Member petitioned against:—J. Bailey, Esq.
Counsel for Petitioners:—Mr. Serjeant Merewether, Mr. Chambers; in the absence of Mr. Chambers, Mr. Lewis and Mr. Wordsworth.
Agents:—Mr. Florance and Mr. Hill, Worcester.
Counsel for Sitting Member:—Mr. Harrison, Mr. David Pollock, Mr. Whateley.
Agents:—Messrs. Grane and Brampton.

THE petitions in this case were wholly against the return of Mr. Bailey. The seat of the other sitting member, Mr. Robinson, was not disputed. The case resolved itself entirely into a scrutiny.

On the commencement of the proceedings the under- A Committee will

not proceed in a scrutiny without the production of the register.

The lists signed by the revising barrister, and subsequently numbered, will be received as the register.

sheriff for the city of Worcester produced, and he and one of his clerks proved the due custody of the poll-books, to which no objection was taken. The under-sheriff then produced the lists signed by the barrister, and also a printed book, which was treated by the Committee and the parties as the register until the 6th of April, when Mr. Harrison stated to the Committee that the book produced was not the register for 1834, but for 1833.

Mr. Harrison then cited the cases of *Newcastle under Lyme*(*a*), and *Limerick*(*b*), and urged that by analogy to the strict rule with which Committees before the Reform Act insisted on the production of the poll, in order to have authentic accounts before them of the voters, Committees since the Reform Act ought to demand that the register should be produced to them for the same purpose before they proceeded with a scrutiny.

Mr. Serjt. Merewether pressed upon the attention of the Committee that there was no law which obliged petitioners to produce the register, nor was there any express rule of Committees on the subject, as there was with regard to poll-books. In the second *Carnarvon case*(*c*), indeed, no register at all had ever been made out, yet that Committee proceeded with the scrutiny. The utmost that could be required with regard to the register was, that each party should produce it when their case was of such a nature as to require it.

The Chairman declared that the opinion of the Committee was, that they could not proceed without the register. How was it possible for them to decide whether a voter possessed at the poll the same qualification for which his name was inserted in the register, unless they had the register before them? It was not the intention of the Committee to decide whether or not the non-production of the register was fatal to the petitioner's case,

(*a*) 1 Peck. 489. (*b*) Cor. & Dan. 91. (*c*) P. & K. 459.

but they thought that the party who asked for the register at first should now produce it.

Mr. Serjt. Merewether undertook, on the part of the petitioners, to immediately send down to Worcester for the under-sheriff to produce the original register. In the meantime, until his arrival it was agreed between the parties to treat the printed copy of the register of 1834 as the proper one, it being understood that any error arising from its being made use of should be rectified on the production of the original register.

On the 8th of April the under-sheriff again attended and produced what he termed the original register, which consisted of the lists which had been revised and signed by the barristers. These lists had afterwards been put together, and the names numbered in order by the under-sheriff, but no copy of them was made into a book, in the manner directed by the 54th section of the Reform Act. From these lists so put together and numbered, printed copies were made, which were compared by the under-sheriff with the originals, and those printed copies were termed and used on every occasion during the election as the register.

No objection was made to the reception of these lists, and the scrutiny proceeded.

The early cases in this scrutiny were principally of receipt of parochial relief after registration, and offered no points of novelty or interest.

Thomas Hall's case.

April 4th. The question of change of occupation may be entered into by a Committee, although the voter at the poll may have answered the

The objection to this voter was, that he had not, at the time he polled, the qualification in respect of which his name was inserted in the register. There was an entry in the poll-book that the three questions under the Reform Act had been put to him; he had voted for Colonel Davies. An objection was taken to any inquiry into this case.

Mr. Serjt. Merewether, in support of the objection, insisted that the jurisdiction of the Committee did

third question in the affirmative.

not extend to cases where the voter has answered the third question, and he relied upon the decision of the *Windsor* Committee in *William Davis's case* (*d*).

Mr. Pollock and Mr. Whateley, against the objection,

Urged that the constant practice of Committees had been, since the decision in *Harper's case*(*e*) by the *Bedford* Committee, to enter into objections of this kind, and they relied upon arguments similar to those used by Mr. Cockburn in *William Davis's case*.

The Committee resolved that they would enter into the question of a voter having, at the time of polling, the same qualification for which his name was entered upon the register. They also came to a resolution (which was communicated to the counsel on the 6th of April,) that they did not think it right to examine in each case, whether the man having changed his residence, had changed it to one which still left him a good qualification.

The case was then gone into, and the Committee resolved that Thomas Hall was not entitled to vote at the last election.

Thomas Cook's case.

April 6th. A change of occupation by a 10*l.* householder, whether the house which he secondly occupies be of the same, greater, or less value, disqualifies him from voting.

The voter in this case had, before he polled, moved from the house in respect of the occupation of which his name had been inserted in the list of 10*l.* householders, and gone into another of the same value.

Mr. Chambers, in support of the vote, contended that the removal from the occupation of one 10*l.* house to the occupation of another of the same value, did not constitute a change of qualification, and he urged similar arguments to those used in support of the same proposition in *Cruttenden's case*(*f*), before the *Rochester* Committee.

(*d*) Ante, p. 170. (*e*) P. & K. 142. (*f*) Ante, p. 109.

The Committee, without calling on the counsel on the other side, resolved that a change of occupation between the register and the poll, without reference to the fact whether the new house is of the same value, or of more value, or of less value than the old one, destroys the vote.

Joseph Carter's case.

April 9th. The occupier of a leasehold house does not forfeit his right to vote by bankruptcy, if he remain in the house, and no act is done by the assignees to show that they have elected to take the lease.

The objection against this voter, a 10*l.* householder, was change of occupation. A fiat of bankruptcy had been issued against him on the 10th of November, he was declared a bankrupt under it on the 24th of November, and a messenger was put into his house. The assignees were appointed on the 9th of December. His household goods were sold on the premises, and his stock in trade removed to some auction rooms on the 28th of January, and then the messenger left the house. The voter and his family continued in the house from the bankruptcy till after the election, which took place in the beginning of January, and the sale. It was assumed that the voter was merely a tenant, and not the owner of the house.

Mr. Pollock against the vote.

The operation of the fiat of bankruptcy is to deprive the bankrupt of every thing that he possessed, and to vest it in his assignees, who, by the act of putting their messenger into the house, must be held to have elected to have taken possession of it. After the messenger had been put into the house, the voter merely resided in it by mere sufferance of the assignees, but had no occupation of it as landlord or tenant, and consequently not the same qualification in respect of which his name was inserted in the register.

Mr. Serjt. Merewether in support of the vote.

The voter remained the tenant to the landlord until the assignees did some act to shew that they accepted

the lease. This was the ancient law(*g*) previous to the late Bankrupt Act, in which there is a special proviso applicable to the case of bankrupt tenants (*h*). No act has been proved to have been done by the assignees in this case, to shew that they elected to take the lease, and, indeed, the fact that the messenger quitted directly the goods were removed, proves that he was put in merely for the purpose of taking possession of the goods, and not of the house. There was no alteration, therefore, of the occupation of the house, and the voter retained his right to vote.

The Committee determined the vote to be good.

William Reynolds's case.

April 6th. A witness may be called to prove that he voted in the name of another person, but he need not answer, unless he

The vote of William Reynolds as a freeman appeared on the poll. A William Reynolds was called, who stated that he was the son of William Reynolds, who was a freeman of Worcester, and who lived at Birmingham, and that he himself was not a freeman, and never had been so. An objection was then taken to any further questions being put to him.

Mr. Whateley, in support of the objection, urged that

(*g*) See *Copeland* v. *Stephens*, 1 Bar. & Ald. 593.

(*h*) 6 Geo. IV. c. 16, s. 75: "And be it enacted, that any bankrupt entitled to any lease or agreement for a lease, if the assignees accept the same, shall not be liable to pay any rent accruing after the date of the commission, or to be sued in respect of any subsequent non-observance or non-performance of the conditions, covenants, or agreements therein contained; and if the assignees decline the same, shall not be liable as aforesaid, in case he deliver up such lease, or agreement to the lessor, or such person agreeing to grant a lease, within fourteen days after he shall have had notice that the assignees shall have declined as aforesaid; and if the assignees shall not (upon being thereto required) elect whether they will accept or decline such lease, or agreement for a lease, the lessor or person so agreeing as aforesaid, or any person entitled under such lessor or person so agreeing, shall be entitled to apply by petition to the Lord Chancellor, who may order them to elect and deliver up such lease or agreement, in case they shall decline the same, and the possession of the premises, or may make such other order therein as he shall think fit."

it was contrary to the established practice of Committees to suffer questions to be asked of a man, the answer of which might expose him to an indictment for a misdemeanor in personating a voter. He relied upon the same authorities that were cited by Mr. Serjt. Merewether and Mr. Rogers in *Primmer's case* (*i*), and contended that the decision of the *Southampton* Committee, admitting a person to be examined to prove that he had voted in the name of another, was universally disapproved. He also pressed upon the Committee that they had already admitted in evidence the admissions of voters against their own votes, and thereby might be held to have decided the question, for no admissions of a person could be legally received, where that person himself might be put in the box and examined as a witness, and therefore that when the Committee received those admissions, they must have held that the persons who made them could not be examined themselves.

chooses, any question tending to criminate himself.

Mr. Chambers, against the objection, contended that the proper course for the Committee to adopt would be to warn the witness, as was done in *Primmer's case*, that he need not answer any questions which would criminate himself. He also relied upon the same arguments and authorities that had been used by Mr. Austin in the *Southampton case*, and contended that the decisions in that case were in unison both with the law and the general sense of the profession.

The Committee determined that the witness may be asked whether or not he voted, after a strict caution by the Chairman that he need not answer any question having a tendency to criminate himself.

The witness was then called and examined, after having been admonished by the Chairman. It clearly appeared, from his evidence, that he had voted in his father's name, and his vote was struck off the poll.

(*i*) P. & K. 222, 225.

William Prosser's case.

April 7th. A voter may be called as a witness in support of an objection against his own vote, but he need not answer any question which he thinks may tend to invalidate it.

The objection to this voter was under the 7 & 8 Geo. IV. c. 37, that he had been employed at the election, and been paid for his services. The voter himself was called as a witness in support of the objection to his own vote.

Mr. Whateley objected to the voter's being examined against his own vote. All that had been decided in the *Southampton case*(*j*) was, that a person who was not a voter might be called to prove that he had voted in the name of another person, who was a voter. In the *Middlesex*(*k*) and many other cases it had been decided that voters could not be called as witnesses in support of their votes, and the same principle must be held to prevent them from being called to annul them; for if voters were admitted to be examined to disqualify themselves, it would give rise to all manner of abuses and tampering. The man, for instance, who had given a candidate his vote at the poll, might be bribed afterwards to come and take it away from him, by invalidating it before a Committee. If the admissions of a voter were to be received, surely the voter himself could not be examined.

Mr. Chambers, in support of the evidence, relied upon the decision of the *Southampton* Committee in *Primmer's case.* The rule upon this species of evidence was correctly laid down by Mr. Rogers, in his Law and Practice of Election Committees(*l*), in these terms:— "It has been said," (*Middlesex*(*m*) and *Penryn*(*n*),) "that a voter having exercised his franchise, cannot be admitted to invalidate his vote; it is true the principle was only adverted to by counsel in argument, and was allowed to pass *sub silentio,* but there seems to be no

(*j*) P. & K. 226.
(*k*) 2 Peck. 134, *Hardinge's* and *Ireland's* cases.
(*l*) Page 171.
(*m*) 2 Peck. 35.
(*n*) C. & D. 63.

foundation for it; if the witness has been properly admonished that he is not obliged to give evidence, the effect of which may be to destroy his vote, there seems to be no objection to allow him to do so if he chooses; the courts of common law protect a witness in his refusal to answer any question, the answer to which might subject him to a forfeiture of his estate, Phillips on Evidence (*o*); but if he chooses to give such an answer, there is no legal objection, it is apprehended, to such evidence being received; in the same manner, Committees have usually admonished a witness that he is not obliged to answer any question which might tend to invalidate his vote; and it seems, from the following case, that if such evidence be offered after the usual admonition has been given, it will not be rejected." Mr. Rogers then refers to the second *Ilchester case* (*p*), which is decisive on this point; for there a voter was permitted to be a witness for the purpose of proving that he himself had no right to vote, after having been admonished by the chairman that he was not bound to answer any question that had that tendency; and no objection was made to his competency on the part of the candidate for whom he had voted.

The Committee determined that William Prosser should be examined, subject to a caution by the Chairman that he need not answer any question, the answer to which he thought might tend to invalidate his vote.

The voter was then cautioned and examined, and it appeared from his evidence, and that of another witness, that he had been employed by a person of the name of Weobly as a messenger to Mr. Bailey's Committee during the election, and had been paid 3*s.* a day for his services.

Mr. Whateley in support of the vote.

The act 7 & 8 Geo. IV. is badly drawn, but the ob-

(*o*) 7th edit. 276. (*p*) 2 Peck. 251.

vious intention of it was only to deprive of their votes such persons as were employed and paid by the candidates. The words as to the employment are general, but those as to the acceptance of payment for the services are, if the person employed "shall at any time before, during, or after such election, accept or take from any such candidate or candidates, or any person whomsoever." These general words, "any person whomsoever," must, from the general scope and spirit of the act, be construed to be agents of the candidate. There was no proof, however, in this case that Weobly was the agent of any of the candidates, and the employment of the voter by him ought not, therefore, to invalidate the vote. In *Wilcox's case*(*q*), the only reported case on the subject, the check-clerk was employed by one of the candidates.

The Committee, without hearing the counsel against the vote, determined the vote to be bad.

The Chairman said, "the Committee had no doubt but that the intention of the legislature, in passing the act of parliament in question, was that no person should vote under any corrupt influence, and therefore the words, 'any person whomsoever,' were used with reference to the acceptance of payment or reward. Agency was very difficult of proof, and had it been necessary that the acceptance of payment or reward should have been from the candidates or their agents, the act would have had very little operation."

April 9th. The vote of a parish clerk, paid by both parties for pointing out the houses of voters, is bad.

James Lloyd's case.

The voter was a clerk of one of the parishes in Worcester. It appeared to be a custom, during the canvasses at Worcester, for the parish clerks of every parish to accompany the different canvassing parties through their parishes, to point out the houses of the voters. It was

(*q*) *Bedford*, P. & K. 136.

proved that James Lloyd had accompanied Mr. Robinson's and Colonel Davies's parties, and had received payment of a sovereign from each of their committees for his services. He had voted for Mr. Bailey, and his vote was attacked before the Committee, on the part of the petitioners, and upon proof of these facts was ordered to be struck off the poll.

Samuel Barnes's case.

April 9th. The vote of a city officer who attends an election, and afterwards sends in a bill for his services, and is paid by a candidate, is good.

The voter was one of the four serjeants at mace at Worcester. The serjeants at mace are not constables, but they attended the Sheriff of Worcester at the proclamation, and also were in attendance during the election at the Town Hall, where the principal polling place was, for the purpose of keeping the peace. The voter, after the election, carried in a bill to Mr. Robinson's committee, in these terms: "G. R. Robinson, Esq., dr. to the four serjeants for fees at the election for the city of Worcester, Jan. the 8th, —35, *2l. 2s.* John Crane, Samuel Barnes, William Allen, George Griffiths." The bill was paid, and the voter wrote "Settled, Samuel Barnes," at the bottom of it.

Mr. Whateley in support of the vote.

The voter was employed at the election by the sheriffs and not by the candidates. He could not have refused to attend without forfeiting his employment, and it was not the intention of the framers of the 7 & 8 Geo. IV. to either deprive all city officers of their votes or to deprive other electors of their protection in the tumults likely to arise at contested elections in populous towns. In the *Windsor case* the votes of all the town constables were held good (*r*). The payment by a candidate in this case was a mere gratuity, unconnected with any promise before the election, and could not therefore be held to have retrospectively the effect of invalidating a vote already given to another candidate.

(*r*) See *Lovegrove's and Moreton's cases*, ante.

Mr. Serjt. Merewether against the vote.

In the *Windsor case* the constables had received no payment, and therefore the Committee held their votes to be good, although they had been employed in the election, but the town-clerk (*s*) had been paid as well as employed, and therefore the Committee held his vote bad. In the present case the voter had been both employed and paid, and his case therefore came both under the provisions of the statute and the decision of the *Windsor* Committee. The special exemption in the statute of all persons from serving as special constables at an election, showed the intention of its framers to be, that those who acted as constables at an election should forfeit their votes.

The Committee determined the vote to be good.

Thomas Clarke's case.

April 9th & 10th. The receipt of a sum of money for travelling expenses and loss of time by a voter after he had voted, but of which he had received no promise before he voted, does not invalidate his vote.

The objection to this voter was, that he had been bribed. He and three other voters for Worcester had been employed at the Kidderminster election. They were brought over to Worcester in a coach, for which they paid nothing, to vote for Mr. Bailey, and after voting they received a sovereign each, as they were told, for their expenses and loss of time. The voter stated that he expected to receive something for his loss of time, but had not asked for any thing, nor had he been told he should receive it until after the election. He received 5*s*. a day for his services as a constable at Kidderminster, and was carried back there gratis about an hour after he had voted.

Mr. Serjt. Merewether against the vote.

There can be no doubt that the payment of expenses in this case was merely colourable, for none have been proved to have been incurred. There is as little reason for holding the payment here to have been bonâ fide for

(*s*) See *Secker's case*, ante, p. 186.

loss of time, for the voter could only have gained 5*s.* at Kidderminster, and he was paid four times that sum. The payment of the sovereign must have been therefore a mere bribe for the vote. Committees have always been astute and anxious to detect and punish bribery when masked under the garb of travelling expenses. In the *Ipswich*(*t*) and *Berwick*(*u*) *cases*, where large sums had been paid under the name of allowances for travelling expenses and loss of time to outvoters, the elections of the members whose agents had been guilty of those practices were declared void. In the *Durham case*(*x*), also, where similar practices were resorted to, the election was declared void; and there it was argued by the counsel on the successful side, that all payments of this kind, although reasonable and bonâ fide, were unlawful.

The Chairman. Has there been any decisions on payments of this kind since the Reform Act?

In the *Oxford case*(*y*) the non-resident freemen received 2*l.* for their expenses and two 10*s.* refreshment tickets each, and in consequence of these and similar acts the election was avoided. Since the Reform Act(*z*) it is

(*t*) 1 Lud. 21.

(*u*) 1 Peck. 401.

(*x*) 2 Peck. 176.

(*y*) P. & K. 62.

(*z*) In the Report of the Committee on Election Expenses, in 1834, page x., there occurs the following passage: "Your Committee, by the increase of polling places, have in view a reduction of the great expense hitherto, in many instances, incurred in conveying voters to the poll, which expense has at all times been of doubtful legality. Some Committees of the House have sanctioned, while others have disapproved the practice; and every Election Committee has fixed their own limit of such expenses. Mr. Harrison has given an opinion to your Committee, that since the passing of the Reform Act, any expense in conveying voters to the poll is illegal; at all events, your Committee hope, that by the increase of booths recommended, the future charge for conveyance to the poll, by whomsoever borne, will be much reduced."

The opinion of Mr. Harrison here alluded to, appears in the evidence of that learned gentleman, pp. 88, 89, ques. 1427. "Then do you consider that any other regulation is requisite than the Reform Act to guard the candidate against ex-

hardly possible indeed for a bonâ fide payment to be made for travelling expenses, for no voter for a borough

penses?—Ans. There is another voluntary expense upon which a question of considerable importance arises, as I think, incidentally, out of the provisions of the Reform Act, as applied to counties, and which, singularly enough, was not raised in the last general election, and that is, the expense of carrying persons to the places of election, and subsisting them while absent from their homes. I will state why I think such expenses have become illegal. In 1806, Mr. Tierney brought in a bill expressly to declare and enact such expenses to be illegal. The debates upon the subject are found in vol. vi. pp. 371, 426, 505, 518, 955, and vol. vii. p. 571, of the Parliamentary Debates; and among others there is the speech of Sir Arthur Pigot, vol. vi. p. 518, then Attorney-General, in which he stated that 'he had considerable practice before the Committees, and he had seen several Committees find that the providing carriages for electors who resided at a distance, or supplying them with the means of providing such carriages, were not violations of the statute of William; other Committees, that the supporting electors while absent from home, and enabling them to return to the places from whence they came, were also not to be considered as falling within the statute. For twenty years he was certain that had been the course pursued by the Committees. Elections were not declared void on account of such practices. The difficulty had always been to ascertain whether, under pretence of such allowances, corruption had been practised. Where no such excess as to justify such an inference had been found, the facts he had already alluded to had not been deemed by Committees sufficient to avoid elections.' Mr. Fox and other members opposed the bill of Mr. Tierney, and I have here a book containing the bill of Mr. Tierney, in three different shapes, as amended upon recommittals; it was thrown out, as appears, upon the opinions that it would have the effect of disfranchising a great many persons, a great many out-voters of boroughs, who could not afford to pay the expense of carriages or subsistence in going to vote, and that it would, in counties, disfranchise a great many individuals who lived at a distance from the town of polling, not merely with reference to the expense, but with reference to the manner in which carriages are taken up on such occasions."

"Qu. 1428. Then it is your opinion, that candidates cannot, without risking their seats, pay the expenses of carrying voters?—Ans. It is: the House of Commons having put an end to all out-voters entirely, and having divided the polling in counties into as many places as may be found convenient, not exceeding fifteen, so that there can scarcely be a place in which an individual having a right of voting will have to go more than eight or ten miles. I thought that the effort that was made by Parliament to prevent to a great extent the necessity of carry-

can have more than seven miles to travel from his residence, and in every county the polling places are so arranged that every voter has a place where he may give his vote within a reasonable distance of his qualifying property.

The only point for the Committee to determine is, whether this payment is or is not bribery, which it must be held unless they consider it a bonâ fide payment. In the late case of *Bremridge* v. *Campbell*(*a*), where an action had been brought against a candidate for money laid out in paying the travelling expenses of voters at an election for Barnstaple since the Reform Act, Lord Chief Justice Tindal laid down the law to the jury in these terms: "It will be for you to say, as to the sums paid to the several voters, whether they were paid really and bonâ fide for travelling expenses, and travelling expenses only, or were paid to induce them to give their votes. The question is, whether any part was paid as a bonus over and above the actual expenses of the party. If the payments were made for travelling

ing and subsisting voters, following one of the objects stated in the preamble, of diminishing the expense of elections, might be fairly considered as a parliamentary construction upon the law, contrary to the parliamentary construction upon those bills of Mr. Tierney's. One of the recitals of Mr. Tierney's bill, when presented, was, 'And whereas all persons having a voice or vote at any election for a member to serve in parliament ought to exercise their right to vote without charge or expense for meat, drink, lodging, or entertainment to any person being a candidate at such election, as well during their stay at the place of election as in going to and returning from the same;' which clause was obviously intended as a declaratory recital, by Mr. Tierney, of his conception of the law. I always considered, as a parliamentary declaration, that those expenses, if not made a source of corruption, were legal; but my doubt has been whether, as under the Reform Act, the out-voters were put an end to, and places of voting more near were given, and residence with respect to towns made a necessary qualification an opposite construction of the law might not now be fairly inferred, and I have accordingly given numerous opinions, that I considered these expenses exceedingly hazardous."

(*a*) 5 Car. & Payne, 186.

expenses only, it seems somewhat singular that all the voters should be paid alike. It seems that 6*l.* was given to a man who lived only a few miles from Barnstaple, who certainly, in the first instance, would not require travelling expenses at all. But it is said, that this is no matter, because the other parties agreed (*b*), and therefore it is not bribery. But it seems to me, that that only shows, that all parties agreed in setting the statute

(*b*) In this case there were three candidates, and it was agreed among them, that a voter from London, giving a plumper, should receive 20*l.* from the candidate for whom he voted, and giving a vote for two candidates, should receive 10*l.* from each of them. The expenses of voters from other places were also agreed upon at a certain sum. Mr. Serjeant Spankie, for the plaintiffs, insisted "that the payment of these expenses was not bribery; because bribery is to give one candidate an advantage over another; and where all parties agree in the same course of proceeding, it is not bribery." The Chief Justice, in his summing up on this part of the case, which he did after commenting upon the proofs of the candidate defendant ever having authorized the payments and the advancement of money out of a fund in which the plaintiffs were jointly interested, observed, "that if those points were found in the affirmative then will come the third question, viz. how much the plaintiffs are entitled to recover, and that will depend upon the nature of the payments. If any of them were made to bribe the voters to vote for Sir Colin Campbell, or if any part comes within the provisions of the Treating Act, those sums cannot be recovered. I dissent from the opinion given by the counsel for the plaintiffs, that it is not bribery if all parties agree in giving a certain sum for expenses." The jury found a verdict for the defendant, but it does not appear on what ground they did so. See also, *Baynton* v. *Cattle*, 1 Mood. & Rob. 265, where, with regard to payment of travelling expenses, Mr. Justice Alderson makes use of these expressions: "First, then, are the disbursements legal? Now upon this point there can hardly be any manner of doubt. Take, for instance, the items alleged to have been paid to the voters for their travelling expenses home. It is clear from the evidence, that the sums paid to those voters under pretence of paying their expenses, in fact bore no sort of proportion to the actual expenses. If indeed the voters had only been paid their actual expenses, a difference of opinion has existed as to the legality of such payments. Some Committees of the House of Commons have held such payments are legal; others (and probably their's is the more correct opinion), that such payments are not legal; for it is obvious that such a mode of proceeding, if allowed, would lead to great abuses."

at defiance. You are to say whether the money was honestly paid, merely for travelling expenses, and if you think it was not, then you will strike off such sums as you think exceeded a reasonable sum for the expenses." If then the Committee do not think the 1*l.* in this case to have been honestly paid for the loss of time of a man during a part of a day, who was only earning 5*s.* for his whole day's work, the vote must be struck off the poll.

Mr. Pollock in support of the vote.

In order to substantiate a case of bribery against a voter, it must be proved in the words of the Bribery Act (*c*), that "he has asked, received, or taken money or reward by way of gift, loan, or other device, or agreed or contracted for money, gift, office, employment, or other reward, to give his vote, or to refuse or forbear to give his vote." In this case, however, before the voter polled, there was no money paid to him, there was no promise made to him, no contract or agreement entered into by him that he should receive any thing after he had polled. The payment that was made to him was a fair remuneration, not only for his loss of time but for his chance of losing his employment at Kidderminster altogether, by being absent from the election there, where his services were wanted. In the *Berwick, Ipswich,* and *Oxford cases,* the payments were obviously mere cloaks for treating; but the utmost that was decided in those cases was, that if the payments of extraordinary sums, under the name of travelling expenses and loss of time, were traced to the member or his agents, they would be considered as acts of treating, and the election would be avoided. No Committee, however, has decided such payments to have been acts of bribery, even when they have been made by a member's agents. Here, however, there is no evidence

(*c*) 2 Geo. II. c. 24, s. 7.

that the payment had been made by any one connected with the sitting member.

Such a case as the present could hardly indeed be held to constitute treating. In the *Cirencester case*(*d*), where it was proposed to prove that one of the sitting member's committee, in his presence, and near the hustings, declared to the voters that they might receive half-a-guinea each instead of a dinner, but it was not pretended that this declaration could be connected with any prior promise, the Committee, without hearing the sitting member's counsel, declared their decided opinion that the evidence, if admitted, would amount to nothing. In the *Sudbury case* (*e*), where the counsel for the petitioners stated that they could prove a very public distribution of money amongst the voters for the sitting members, after the election, but did not say that they had any proof either of money being given or promises of money being made by them, *previous to or during the election*, the evidence was not gone into, as the Committee seemed to think that the facts, if proved, would not affect the seats. Whether, however, the voter was treated or not, is not the question before the Committee; all they have to decide is, whether he was bribed or not, and unless some previous contract or agreement before he voted is proved, he cannot be said to have been bribed (*f*), and his receipt of this money for his expenses will not vitiate his vote.

The Committee determined the vote to be good.

Thomas Dutton's case.

April 11th. Bets on the success of a candidate made by a voter, either

The voter was a respectable tradesman of Worcester, and had, a short time previous to the election, betted 10*l.* to 5*l.* with another voter, in the same class of life with himself, that Mr. Bailey would not be returned the

(*d*) 1 Peck. 467.
(*e*) 2 Doug. 136, 137.
(*f*) See *Lord Huntingtower* v. *Gardiner*, 1 Barn. & Cres. 297.

next election. The voter had also made a bet with another voter of a sovereign, that Colonel Davis headed Mr. Bailey 100; another sovereign that he headed Mr. Bailey 200; and two days afterwards he made another bet, with the same person, of a sovereign, that he won both his other bets. It did not appear whether the voter had promised his vote before he made the wagers (*g*).

with another voter or a person not a voter, invalidate the vote of the person so making them.

Mr. Pollock against the vote.

It is of no consequence whether the voter had or not promised his vote to a candidate before he made bets upon his success; for a promise only binds a man to support a candidate so long as that candidate maintains the principles and the character which originally caused that promise to be given. "Many things," said Mr. J. Ashurst, in *Allen* v. *Hearn*(*h*), speaking of a promise, "may happen to release a man from such an engagement with perfect honour, as if the candidate's character were impeached, &c. But the bias occasioned by a wager, cannot be so got rid of." The moment that a voter has staked his money upon a candidate's success, however dishonourable he may discover the previous conduct in life of that candidate to have been—however repugnant to his political principles may be the sentiments which that candidate may subsequently choose to profess—his pecuniary interest must oblige him to lend his vote and support to that candidate's success. The Court of King's Bench, in *Allen* v. *Hearn*, decided such wagers to be illegal, and the *Windsor* Committee, in a multitude of cases (*i*), determined that votes given under their influence were invalid. It is to be hoped that this Committee will follow the example of the *Windsor*,

(*g*) The objections to this voter were, first, that he had, on the day of election, betted or laid a wager on the result of such election, which gave him a corrupt interest in giving his vote: secondly, that he was bribed by an agent to give his vote: thirdly, that he was bribed to give his vote.

(*h*) 1 T. R. 60.

(*i*) See cases of *Bragg*, *Dyson*, and *Burnham*, supra, pp. 191—194.

and not countenance a practice which, by the simple contrivance of an agent or partizan of a candidate, pretending to bet against his own party, might be made the means of a system of bribery, most extensive in its operations, and most difficult of prevention.

Mr. Serjt. Merewether in support of the vote.

All that was decided in *Allen* v. *Hearn* was, "that a wager between two voters, with respect to the election of a member to serve in parliament, laid before the poll began, was illegal, and that the winning party could not recover the amount of it in a court of law. The propriety of this decision, and the correctness of the principle upon which it proceeds, cannot be doubted; but the question which the Committee has to try, is a very different one from that which was involved in that case; for it is not whether the voter can recover his bet, but whether his vote is so far influenced by it as to be rendered invalid. *Allen* v. *Hearn* is, in fact, a decision in favour of the vote, for, by deciding that such a bet could not be recovered at law, it left the voter free from any legal obligation to pay, should he change his mind, or his candidate be unsuccessful. Can it, however, be supposed that a person with the means, and in his class of life, of the voter in question, would suffer the small sums staked upon these occasions to have any weight with him, as to the manner in which he bestowed his vote? In fact, it must be presumed that the same political feeling which led him to support a candidate, induced him also to bet upon his success. If bets were used as a colour for bribery, they would no doubt invalidate the vote, but there was no shadow of pretence to impute any such motives in the present case. Unless, however, there was some undue influence over the vote when it was given, the Committee must determine it to be good.

The Committee determined the vote to be bad.

The Chairman informed the counsel, "that the

grounds of their decision were, that as the law clearly held bets under circumstances of this kind, and upon subjects of a light nature, to be void, the Committee thought they ought to do what they could in aid of the law, by mulcting voters, under such circumstances, of their votes."

Mr. Whateley then inquired whether this decision would apply to the case of a voter betting with a person not a voter?

The Chairman said, that the same principle would apply to a case of that kind also.

William Winwood Goodman's case.

April 13th. It is no objection to the vote of a registered freeman, that he has ceased, at the period of the election, to reside within seven miles of the place where the poll for a city was taken, previously to the passing of the Reform Act.

The voter was a freeman. He himself proved that he had left Worcester in March, 1833, and resided ever since at Birmingham. No objection was proved to have been taken to his vote before the revising barrister.

The case was argued, at the desire of the Committee, by Mr. Chambers against the vote, and Mr. Pollock in support of it, upon two points; first, whether, when a freeman was neither resident at the time of registration, nor at the time of polling, within seven miles of the city or town, he ought to be struck off the poll; and secondly, whether a freeman, who had been resident within seven miles at the time of registration, but at the time of polling had moved to a greater distance, ought to be struck off the poll?

Upon the first point, Mr. Chambers pressed, that the objection being a continuing objection, might be taken before a Committee, although it had not been taken before the revising barrister, and he mentioned as an analogous instance, the breach of covenants by tenants, which might be taken advantage of by their landlords at any time (*k*); and Mr. Pollock contended, that as the objection existed on the 31st of July, it could not be

(*k*) See *Doe* d. *Flower* v. *Peck*, 1 B. & Ad. 428; and *Doe* d. *Heming* v. *Durnford*, 2 Cro. & J. 667; and see also *Lord Southwell's case*, *ante*, p. 64; and *Rea* v. *Lawrence*, 2 Chitty Rep. 371.

entered into before the Committee, without opening the register. Upon the second point, the arguments on both sides were similar to those used before the Rochester Committee in *David Hermitage's case.*

The Chairman stated the opinion of the Committee to be, that "presuming the objection against the vote to have existed on the 31st of July, they thought that the register ought to be closed, and that the vote was a good vote; and that upon the second point, their opinion coincided with that of the Rochester Committee, viz. that change of residence by a freeman, between the register and poll, did not disqualify him from voting."

The resolution of the Committee was, "That William Winwood Goodman was entitled to vote at the last election."

Mr. Chambers then abandoned the case on the part of the petitioners.

The Committee then determined "That Mr. Bailey was duly elected, and ought to have been returned; that neither the petition nor the opposition to it were frivolous or vexatious; and they reported to the House that they had altered the poll by striking off the names of George Doughty, &c., in all 95 names."

CASE XI.

COUNTY OF ROSCOMMON.

The Committee was appointed on the 20th March, 1835, and consisted of the following Gentlemen:

Sir Wm. Molesworth, Bart. M. P. for East Cornwall, (*Chairman.*)

William Tooke, Esq. M. P. for Truro.
Sir Geo. Harper Crewe, Bart. M.P. for South Derbyshire.
John James Hope Johnstone, Esq. M. P. for Dumfriesshire.
Wm. Bingham Baring, Esq. M. P. for Winchester.
Richard Walker, Esq. M. P. for Bury.
Edward Geo. Barnard, Esq. M. P. for Greenwich.
Leonard Dobbin, Esq. M. P. for Armagh.
Frederick Paget, Esq. M. P. for Beaumaris.
Josh. Brotherton, Esq. M. P. for Salford.
John Temple Leader, Esq. M. P. for Bridgwater.

Petitioners:—Thomas Johnston Barton, Esq.; Electors in his interest.

Sitting Member attacked:—The O'Connor Don.

Counsel for the Petitioners:—Mr. Harrison, Mr. Thesiger, and Mr. Wrangham.

Agent:—Mr. Baker.

Counsel for the Sitting Member:—Mr. Serjt. Spankie, Mr. Serjeant Merewether, and Mr. Dowling.

Agent:—Mr. William Stephens.

THE petitions in this case involve a scrutiny against the sitting member.

Poll books of an Irish

The deputy clerk of the peace for the county of Ros-

county election refused to be received in evidence.

common produced the poll-books, which, he stated, had been given after the numbers had been declared at the close of the poll, by the sheriff to the under-sheriff; that he was present at the time, and that he walked with the under-sheriff to his own office, where the under-sheriff delivered the books to him. He stated also, that he saw the high sheriff, directly after the numbers on the poll were declared, with the Testament in his hand, but that he did not hear him take any oath to verify the poll; he, however, subsequently identified a memorandum on one of the poll-books, in the handwriting of the assessor, that the sheriff had sworn to the effect required by the act 60 Geo. III. and 1 Geo. IV., before Mr. Grace, a magistrate for the county.

With regard to his own custody of the poll books, after he had received them, the deputy stated, that he had kept them at the top of an open press, in his public office, of which he kept the key; that he had no clerk, and that no one had access to the office, except when he was there; that after he had received the Speaker's warrant he had taken these books from the press and kept them separately from his other papers, but that he had permitted the petitioners' agents, in whom he had perfect confidence, to copy them in his office during two days, part of which time he had gone away and left the books in their custody; and that he had also permitted the respondent's agent, together with a Mr. Dillon, and a lad of the name of Billsland, to copy them, in which business they were employed for seven or eight days, during which, as he had likewise a perfect confidence in them, he had gone out, from time to time, and left the books in their custody. He stated, that he had not examined the books after they had been so left with the agents, to see whether they were in the same state as when he received them.

Mr. Serjt. Spankie against the receipt of the poll-books as evidence.

Although the admission in evidence of the poll-books in Irish elections, has been, by several statutes, exempted from those strict rules of proof of their due custody, which are still required as to the poll-books of the other parts of the united kingdom, still it is requisite that the formalities required by these statutes should be strictly observed, and if they are not so, the same strictness of proof will be required previously to the production of the poll, in Irish cases, as would be deemed necessary to protect the sitting member and the public from any possibility of erasures, alterations, and falsifications of the poll, by which he was returned, in any case of a disputed election petition from England, Wales, or Scotland, where their production might be necessary.

The statute which now regulates the custody, and the proof of the poll-books in Irish county elections, is the 1 Geo. IV. c. 11, the third section of which provides "that in every case in which a poll shall take place as aforesaid, the returning officer shall, within twenty-one days of the final close of such poll, deliver all the poll-books of such election to the clerk of the peace for such county, county of a city, or county of a town, if such election shall be held for a county, county of a city, county of a town; or if in any other place, then and in such case to the officer who has the custody of the records of such place, verifying upon oath, (which oath any justice of the peace for such county, county of a city, county of a town or place, is hereby empowered to administer,) that the poll-books which he delivers in are the original poll-books of such election, upon which the return was founded, and that from the final close of the poll to the time he delivers in the same, there has not been any obliteration, erasure, addition, or alteration made therein; and such poll-books shall be carefully kept amongst the records of such county, county of a city, county of a town or place; and the production of

such poll-books, by such clerk of the peace or officer, or his deputy, shall be deemed sufficient evidence of the authenticity thereof, unless the same shall be disproved." In order, therefore, to render the production of the poll-books by the clerk of the peace of an Irish county, or his deputy, before a Committee of the House of Commons, sufficient evidence of their authority, it is necessary, first, that the returning officer should deliver them within twenty-one days of the close of the poll to the clerk of the peace: secondly, that the returning officer should verify upon oath, that they are the original poll-books, and that there has not been any obliteration, &c. made therein; and thirdly, (which is the most important requisite of all the others), that the poll-books should be *carefully* kept amongst the records of such county. In this case, not any one of these three essential requisites, to render the mere production of the poll-books by the deputy clerk of the peace sufficient evidence of their authority, has been complied with; the case, therefore, stands upon exactly the same footing as that of the production of a poll in any English or Scotch case, or any Irish case before the passing of the 1 Geo. IV. c. 11, and if so, it is evident there has been no such proof of its due custody as would authorize a Committee to receive them, unless they chose to deviate most widely from the established rules of practice with regard to the receipt of poll-books in evidence.

In this case the books were never received from the returning officer at all, for they were given to the deputy clerk of the peace by the under-sheriff, and the due preservation of them, for the time they were under his charge, however short it may have been, ought to be proved; but were it proved, still the provisions of 60 Geo. III. and 1 Geo. IV. have not been complied with. In the second place, there is no legal proof that the sheriff took the oath required by the 60 Geo. III. and 1 Geo. IV. to prove the identity of the books, and

that they are free from obliteration. The deputy clerk of the peace never heard it taken, and the memorandum in the handwriting of the assessor ought not to be received as evidence of the fact. In the *Londonderry case*(*a*), a certificate not signed by the returning officer was refused to be received. In the *Limerick case*(*b*), the affidavit of the returning officer was received, but there it was proved by the evidence of the handwriting of the magistrate before whom it was taken. Here, however, there is no evidence as to the handwriting of the magistrate, and the assessor is not a person legally qualified to verify affidavits.

The strongest objection, however, to the reception of these poll-books is, that they have not been carefully kept by the deputy clerk of the peace. The agents of both sides have not only had free access to, but, in fact, at times the sole custody of them, so that there was every opportunity given for their being tampered with, to the persons most interested and most likely, in many cases, to tamper with them.

The provisions of the statute not having been complied with, the case comes therefore under the general rule applicable to all cases not taken out of it by special enactments, that the careful and guarded custody of the poll must be proved, so as to obviate all doubt as to its identity and accuracy. Now here, the deputy clerk of the peace cannot identify the poll, for all he can say is, that he received books, purporting to be the poll-books, from the under-sheriff. The case is, therefore, nearly identical with that of the *Limerick case*, where the Committee refused to receive in evidence the books which had been delivered by one of the returning officers to the town clerk in a sealed parcel, of the contents of which the town clerk knew nothing. The *Dungarvon case*(*c*) is of a similar nature, for there the

(*a*) P. & K. 273.
(*b*) Cor. & Dan. 90.
(*c*) 1 Roe on Elections, 711.

Committee refused to receive in evidence the books which the clerk of the peace had received from the assessor. It is true, that these cases have been to a certain degree overruled by later cases, but they have been so only to the extent that it is not necessary in every case to produce the poll clerks to identify the poll they have taken; but no case has decided that it is not necessary to bring forward evidence to show that they have come into the hands of the person producing them, from the proper returning officer, and that, whilst in the custody of the person who so produces them, they have been kept under proper guard and caution. Where, indeed, there has not been proof of the manner in which they have been kept, as in the *second Montgomery case* (*d*), in the session of 1833, Committees have refused to receive them. This case, indeed, is much stronger than the *second Montgomery case*, for there the deficiency was of proof of the proper custody; here there is clear proof of improper custody. Unless, however, the poll is proved, it is impossible for the Committee to proceed in this investigation. *Newcastle-under-Lyme case* (*e*); *Waterford case* (*f*).

Mr. Thesiger in support of the reception of the poll-books in evidence.

The statute of 60 Geo. III. and 1 Geo. IV. has been sufficiently complied with to render these books receivable in evidence. No part of it requires that the oath should be made in the form of an affidavit. All that it requires is, that an oath should be taken as to the authenticity of the books, and if such an oath has been taken, it is quite immaterial whether or not the substance of it has been reduced into writing. In the *Dublin case* (*g*) an oath was taken to authenticate the poll, by the sheriff, and it was reduced into the form of an affidavit; the Committee, however, refused to

(*d*) P. & K. 467.
(*e*) 1 Peck. 489.
(*f*) 1 Peck. 236.
(*g*) See post.

receive it as an affidavit, and yet they admitted evidence after they had rejected the affidavit to prove what was sworn, which they would not have done had they judged an affidavit absolutely necessary; for if an affidavit is essential, it is equally essential that the affidavit should be correct. In the *Londonderry case* (*h*) there was no affidavit at all, and yet the Committee received the poll-books upon the testimony of the returning officer as to their identity. In the *Galway County case* (*i*), likewise, there was no affidavit by the sheriff, but it was proved that he had taken an oath to verify the poll-books, and the Committee received them. It is said, however, that there is no proof of the oath having been taken in this case; but can it be credited that the sheriff, with the Testament in his hand, the under-sheriff, and Mr. Grace the magistrate, were all leagued in a conspiracy to go through the farce of appearing to swear an affidavit, without having done so?

With regard to the objection that the books were not delivered by the sheriff to the deputy clerk of the peace, surely it must be reckoned sufficient that the books were delivered by the sheriff in the presence of the deputy clerk of the peace to the under-sheriff, for the purpose of delivering them to the clerk of the peace. There was no possibility, under the circumstances, of their having been tampered with in the interval that elapsed between their delivery by the sheriff to the under-sheriff, and their delivery by the under-sheriff to the deputy clerk of the peace.

With regard to the custody of the poll, it cannot be presumed by a Committee, either that the agents of the sitting member or the petitioner were guilty of the criminal acts of altering or defacing it. The general rule of Committees has been always to entertain every presumption in favour of the correctness of the books produced, until the contrary has been shown. Thus in

(*h*) P. & K. 276. (*i*) P. & K. 512.

the *Drogheda case*(*k*), the sheriff received the poll-books from the poll-clerk on the close of the poll, signed it, and, after he had signed it, gave it back to the poll-clerk to make some alterations in it; and after he had received it back from the poll-clerk, delivered it at the town clerk's office, who was then absent in England, and the town clerk received the book from his clerk a few days after his return, and kept it locked up until he left it with his clerk for the use of the petitioner; and the town clerk's brother, Mr. John Fairclough, had it for two or three days, to fill up some blanks in the registration of the freeholds, in which he assisted him: yet the Committee, on the testimony alone of the sheriff and the town clerk, admitted the books in evidence. In the *Oxford case*(*l*) of 1833, the poll-books had been in the custody of a poll-clerk named Jacobs, who never legally had any right to retain them; who did not keep them locked up, but placed them where there was every opportunity for four or five other clerks to have had access to them; and it appeared that there were erasures in the books, which Jacobs could not account for, yet the Committee received them. In the *Bedford case*(*m*) the Committee received the books, although they had been kept in an open room in the town clerk's office, where several clerks had free access to them, and had been inspected by the sitting member's agent in the presence of a clerk who was not called. Thus in all cases great latitude has been observed in letting in proof of the poll; and wherever there has been no reason to suppose it to have been altered, it has been received. In fact, a contrary decision would put it in the power of clerks of the peace and returning officers, by any slight deviation from the forms prescribed by the statute, to put an end to the case of every petitioner who came to complain of the return in a contested election, however well-founded that case might be.

(*k*) Cor. & Dan. 95. (*l*) P. & K. 101. (*m*) P. & K. 116.

Mr. Serjt. Spankie in reply.

It was not my intention to say that no evidence could be received to supply the defects of the deputy clerk of the peace's testimony, but that it having been proved by his testimony that the statutory regulations had not been complied with, it laid upon the other side to show that the general law had been followed, and that they have produced no evidence to show that it has been followed. The case cannot be assimilated to the *Oxford* or *Bedford cases*. In the *Oxford case* the proof by the mayor alone was held insufficient. Mr. Jacobs, the mayor's deputy, was then called, and he proved that he had copied the poll, and that it had been in a situation where other clerks might have had access to it; but then Jacobs himself was disinterested and unsuspected by all parties. As far, indeed, as he had an interest, it was that his printed copy should be accurate, and that the books should be kept unaltered, so as to agree with it. In the *Bedford case* the books were never out of the custody of the town clerk or his clerks, who, as they were disinterested, must be presumed not to have intermeddled with them. Their care, indeed, like that of a gaoler's deputies, ought to be held a sufficient custody. Here, however, the books were left in the custody of the parties the most likely of any in the world, from their situations, to tamper with them. It is an invidious course to call upon us to make use of an argumentum ad hominem, and say that these particular agents would or would not avail themselves of their opportunities; it is sufficient that many warm partizans in similar circumstances would do so, and it would be a most dangerous precedent were the custody of the agents of the parties held to be a proper custody of the poll-books.

With regard to the observance of the provisions of the statute, it was never contended that the oath should necessarily be taken in the form of an affidavit, but that there should be some proof of its having been taken in

some form. Here, however, there is no proof that any oath was taken at all. No indictment for perjury could be sustained on such evidence as to the swearing of an oath, as that of the deputy clerk of the peace, for he heard not a word of what passed, whether it was innocent or whether it was criminal. The Committee is asked whether it will assume acts of conspiracy or fraud against all these respectable persons; but the true question is, whether the Committee will assume that they did any thing, for there is no proof of their having done it. The magistrate, or the sheriff, or the sub-sheriff, might easily have been called to prove that the oath to verify the poll had been taken; the latter personage might have proved his due custody of the books whilst they were under his care, and yet no one of them has been called. The want of due and careful keeping of these books amongst the records of the county, as directed by the statute, cannot be disputed.

There has been, therefore, a total inobservance of every provision of the statute of 60 Geo. III. and 1 Geo. IV. and there has been no such proof of careful and guarded custody of the poll-books as would authorize a Committee to receive them under the general rules and practice observed as to the proof of polls.

The Committee resolved, "That it appears to this Committee, on the evidence of Mr. John Morrow, the deputy clerk of the peace for the county of Roscommon, that, subsequent to the receipt by him of the Speaker's warrant, access was from time to time allowed by him to the agents as well of the petitioners as of the sitting members, to the poll-books, for the purpose of inspection by them and persons in their company, and that he was occasionally himself absent on such occasions from his office, in an open press in which such poll-books were kept in an unsealed state.

"That under these circumstances this Committee is of opinion that the books were not so carefully kept in

safe custody, and under the constant superintendence of the proper officer, as was in the contemplation of the legislature, and is required by the Act of 60 Geo. III. and 1 Geo. IV. c. 11, for the purpose of constituting such books pure and authentic records of the poll taken at elections in Ireland, and that, therefore, the books now produced cannot be received by this Committee for the purpose of investigation of the votes purporting to be entered thereon."

Mr. Thesiger then proposed to call the agents on both sides, to prove that the books had not been altered whilst in their custody, or under their inspection, and contended, that it had been always usual for Committees, when the custody of the poll had not, in the first instance, been satisfactorily proved by the petitioners, to allow them to produce additional evidence to prove it.

The Committee resolved, "That the counsel for the petitioners are required to proceed, if they think proper, on any other parts of the petition, which do not involve the reception in evidence of the poll-books."

Mr. Thesiger then made an application for time to consult with Mr. Harrison as to the course to be adopted.

The Committee resolved, "That subject to the resolution already agreed to, and on the condition that no further evidence should be offered on the subject of the poll-books, this Committee do, at the request of the petitioner's counsel, adjourn until to-morrow morning, at eleven o'clock."

Mr. Wrangham then stated, that under these circumstances the petitioner withdrew from the contest.

The Committee then resolved, "That the O'Connor Don was duly elected, and that neither the petition, nor the opposition to it, were frivolous or vexatious."

CASE XII.

BOROUGH OF HORSHAM.

The Committee was appointed on the 26th of May, 1835, and consisted of the following Gentlemen:

Sir Thomas Francis Freemantle, M. P. for Buckingham, (*Chairman.*)

William Miles, Esq. M.P. for East Somerset.
Colonel Hugh Duncan Baillie, M.P. for Honiton.
Thomas Frewin Turner, Esq. M.P. for South Leicestershire.
John Bagshaw, Esq. M. P. for Sudbury.
Sir James Charles Dalbiac, Bart., M. P. for Ripon.
Charles Russell, Esq. M. P. for Reading.
J. Cressett Pelham, Esq. M.P. for Shrewsbury.
Wilson Jones, Esq. M. P. for Denbigh.
Hon. John James Knox, M.P. for Dungarvon.
Hon. Charles Law, M. P. for Cambridge University.

Petitioner:—Thomas Broadwood, Esq.
Sitting Member:—Robert Henry Hurst, Esq.
Counsel for the Petitioner:—Mr. Serjeant Merewether, Mr. Maule, and Mr. Stephenson.
Agents:—Mr. Mundell and Mr. Medwin.
Counsel for the Sitting Member:—Mr. Harrison, Mr. Thesiger, and Mr. Hollist.
Agents for the Sitting Member:—Mr. Waugh and Mr. Padwick, Horsham.

THIS was wholly a case of scrutiny, the sitting member having been elected by a majority of three votes over the petitioner. The early cases were only of changes of occupation, depending wholly upon facts. The first case which involved any material point of law was the following:—

Charles Aldridge's case.

May 27th. A change by a 10*l.* householder from the occupation of one 10*l.* house to that of another house of a similar value, after the 31st July, disqualifies him from voting until a new registration is in force.

This voter, who was a 10*l.* householder, was objected to by the sitting member on the ground of non-occupation, at the time that he voted, of the qualification in respect of which his name had been inserted in the register. A paper, signed by the agents of the petitioner, was put in, from which the following extract was read: "We do hereby undertake to admit, on the hearing of the matters of this petition before the Select Committee to be appointed for that purpose, and do hereby admit, that Charles Aldridge, the voter No. 4, on the last register of voters for the said borough, and who voted for the petitioner at the last election for the said borough, absolutely quitted and left the occupation and gave up possession of the house in the South Street, Horsham, for which he is registered on the said register, to Mrs. Elizabeth Hutchinson, his landlady thereof, at Michaelmas last, and that the said Charles Aldridge, from Michaelmas aforesaid up to and at the time of his polling at the last election for the said borough, continued out of the occupation and possession of the said house, and had no interest therein, either as owner or tenant." It was proposed by Mr. Maule, on the part of the petitioner, to call evidence to prove that the voter had removed from the occupation of the house for which he was registered to the occupation of another house of equal value in the borough.

The Committee, after some discussion, intimated to Mr. Maule, that they were of opinion that, if the evidence he had stated were taken as proved, the vote would be bad, the Act requiring that the voter should at the time of voting possess the same qualification as that in respect of which he was registered.

Mr. Maule was further heard in support of the validity of the vote, and urged similar arguments to those

that were urged in support of the same proposition in the *Rochester case*(*a*).

The Committee (without hearing the counsel for the sitting member) determined the vote to be bad.

George Lintot's case.

May 28th. When no objection has been made to a claimant in a borough before the revising barrister at the preceding registration, a Committee will not examine into the validity of his vote, although it had been objected to at a registration two years previously.

This voter had been objected to on the part of the petitioner, on the ground that he did not possess a sufficient qualification in point of value. It appeared that his name had been omitted from the original list made out by the overseers in 1834; that he had therefore sent in a claim, and his name having been placed in the list of claimants, it was subsequently inserted in the lists of voters by the revising barrister. The assistant overseer was called to prove what took place before the barrister in 1834, and he stated that no one objected to the insertion of the voter's name, and all that passed was, that he was asked by the barrister whether the voter was in occupation of the property in respect of which he claimed. This witness deposed also that the voter had been objected to at the registration in 1832, but that the objection had been overruled.

Mr. Maule objected to this vote being entered upon, on the ground that no objection had been made to it before the revising barrister at the preceding registration.

Mr. Hollist called another witness, who failed to prove that an objection had been made before the revising barrister.

The Committee then decided that the vote was a good vote (*b*).

James Baker's case.

A Committee will not inquire into

The objection to this voter was, that he had not paid his rates up to the 31st of July, 1834. His name had

(*a*) *Stephen Cruttenden's case*, ante, p. 109.

(*b*) Accord *John Lock's case, Rochester*, ante, p. 121; and see *Inverness-shire case*, post.

been inserted in the list by the overseers, and no objection had been sent into them against him; but the assistant overseer made a parol objection to him before the revising barrister, which the barrister refused to enter upon.

the validity of a vote to which only an informal objection has been made at the registration.

Mr. Harrison objected to the evidence in this case being proceeded with, on the ground that the voter had had no legal or proper notice of any objection being about to be made to his vote before the barrister.

The Committee, without indeed any argument being offered on the opposite side, determined in favour of Mr. Harrison's objection.

The case was abandoned on the 28th of May, by the petitioner.

The Committee then came to the usual resolutions, "That Mr. Hurst was duly elected and ought to have been returned, and that neither the petition, nor the opposition to it, were frivolous or vexatious."

CASE XIII.

CITY OF CORK.

The Committee was appointed on the 9th April, 1835, and consisted of the following Gentlemen:

The Right Hon. Sir John Byng, M. P. for Poole, (*Chairman.*)

Sir R. Nagle, M. P. for Westmeath.
Lord Viscount Howick, M. P. for Northumberland.
Joseph Scholefield, Esq. M. P. for Birmingham.
Lord Viscount Milton, M. P. for North Northamptonshire.
G. R. Pechell, Esq. M. P. for Brighton.
James Power, M.P. for Wexford County.
John Maher, Esq. M. P. for Wexford County.
Thomas B. Bewes, Esq. M. P. for Plymouth.
R. J. Eaton, Esq. M. P. for Cambridgeshire.
John Bagshaw, Esq. M. P. for Sudbury.

Petitioners:—Daniel Callaghan, Esq. and Herbert Baldwin, Esq. M. D.

Sitting Members:—Lieut. Col. Chatterton and M. Leycester, Esq.

Counsel for the Petitioners:—Mr. Harrison, Mr. Thesiger, and Mr. Austin.

Agents:—Messrs. Fladgate, Young, and Jackson.

Counsel for the Sitting Members:—Mr. Serjeant Merewether and Mr. Pollock.

Agents:—Messrs. Besnard and Exham.

THE petition involved a scrutiny. It likewise contained other allegations, which were not proceeded in.

11th April. A joint affidavit by two

The clerk of the peace of the county of the city of Cork produced the poll-books, which, he deposed, were

in the same state as when he received them from the sheriff, shortly after the election. He also produced an affidavit, delivered to him at the same time by the sheriffs, purporting to verify the poll, under 4 Geo. IV. c. 55, s. 76, and which was in the following form:—

sheriffs, the jurat of which does not contain their names, admitted as evidence to verify the poll in an election for an Irish county of a city, under 4 Geo. IV. c. 55, s. 76.

"County of the City of Cork to wit. } William White and George Foott, sheriffs of the county of the city of Cork, make oath and say, that they have delivered in to the clerk of the peace for the county of the said city of Cork the several poll-books of the election of two members to serve in parliament for the said city of Cork, which closed on Saturday the seventeenth day of January instant, and that such poll-books, so delivered in as aforesaid, are the original poll-books of such election upon which the return was founded, and that from the final close of the poll to the time they so returned in the same, there has not been any obliteration, erasure, addition, or alteration made therein.

William White.
George Foott.

Sworn before me at the city of Cork,
this 19th day of January, 1835,
John Bernard,
Magistrate for the city of Cork."

An objection was taken to the reception of this affidavit by Mr. Knapp (who appeared for the sitting members in the absence of their regular counsel), on the ground that although it purported to be a joint affidavit, yet the names of the parties swearing it were not set out in the jurat: and he referred to a recent decision of the *City of Dublin* (a) Committee, by

(a) The argument used on both sides with regard to this objection were similar to those used before the *City of Dublin* Committee, the report of which is delayed until the return of a commission which has been

which an affidavit, defective in the same way, was refused to be received according to the universal practice of Courts of Law under similar circumstances. Tidd's Practice, vol. ii. p. 500. This objection was answered by Mr. Thesiger, and Mr. Pollock replied to Mr. Thesiger.

The Committee resolved that the affidavit should be received in evidence.

General Barry's case.

A Committee will not enter into the consideration of the validity of a vote upon the register of an Irish county, except in the three cases of an irregularity in the mode of registration, of an objection having been taken before the barrister at the time of registration, or of an objection having arisen to the vote subsequently to the registration.

The affidavit and entry of the certificate of registry of General Barry were put in. The affidavit was in the following form:—"At a session for the purpose of registering the names of persons entitled to vote at elections within an Act passed in the second and third years of his present Majesty's reign, intituled 'An Act to amend the Representation of the People of Ireland, in Parliament,' holden at Cork, in the county of the city of Cork, on the 12th day of October, in the year of our Lord 1832, by me the deputy of the assistant barrister of the East Riding of the county of Cork, appointed for that purpose:"

"I Henry George Barry, Esq. of Ballyclough House, in the county of Cork, do swear that I am a freeman of the county of the city of Cork, having a right to vote at elections for the said county of the city of Cork (*b*). So help me God.

H. G. Barry.

Sworn and subscribed before me in open Court, this 5th day of November, 1832,

T. Moody, deputy assistant barrister."

issued to take evidence in Ireland in the case. The decision of that Committee (before whom the point was argued elaborately for two days) was, that the affidavit should not be received, but that evidence should be admitted to show that the oath to verify the poll-books, under the 4 Geo. IV. c. 55, had been taken by both the sheriffs of the county of the city of Dublin.

(*b*) There is an omission here of the words "and that I am and for the last six months have been a resi-

The entry of the certificate of registry at the foot of this affidavit, made in pursuance of the provision for that purpose in the 28th section of the Irish Reform Act, was in these words:—

"County of the City of Cork to wit. } This is to certify, that Henry Green Barry, of Ballyclough House, in the county of Cork, was this day duly registered before me as a voter for this city in right of his being a freeman (*c*).

Dated this 5th day of November, 1832,
at the Guildhall,
T. Moody, deputy assistant barrister.
John Colburn, clerk of the peace.
Certificate, No. 4,515."

Evidence was then given that General Barry was, both at the registration and election, resident at Ballyclough House, which is near Fermoy, and above eighteen or twenty miles distant from the city of Cork. It was admitted that he had voted as a non-resident freeman at elections for the county of the city previously to the passing of the Irish Reform Act, and that he had been registered, together with a large body of other non-resident freemen, in consequence of a decision of Baron Pennefather, one of the judges of assize for the county of Cork, who, on appeal to him by a non-resident freeman (Mr. Becher) against a decision of the registering barrister for the county of the city of Cork, at the registration session, held immediately after the passing of the Reform Act, had given an opinion that non-resident freemen of the counties of cities ought to be regis-

dent within the said city &c., of &c., or within seven statute miles of the usual place of election in the said city," which are in the form of oath prescribed by the Irish Reform Act, Schedule C., No. 9, to be taken at the registry by resident freemen.

(*c*) The words used in the form given in the Irish Reform Act, Schedule D., No. 3, for the "Certificate of Freemen," are "in right of his being a *resident* freeman."

tered, and had suggested the alterations in the forms observed in the affidavit and certificate above stated, from those prescribed by the schedules of the Reform Act(*d*).

Mr. Serjt. Merewether objected to proceed with this case, on the ground that the Committee had no jurisdiction to inquire into the validity of the vote of a voter, whose name was on the register, except in the cases in which their jurisdiction was especially reserved by the provisions of the 59th section of the Irish Reform Act.

Mr. Harrison contended, that the Committee had full power to inquire into the validity of all the votes on the poll.

(*d*) In a subsequent stage of the inquiry, Mr. O'Connell, the learned member for Dublin, was examined, and gave the following account of what took place with regard to this appeal, which is fuller than those before the Committee when they decided on General Barry's case. He stated, that the appeal was argued by counsel on both sides before Mr. Baron Pennefather, who went away from Cork without having given any decision upon it in open Court, but having left a memorandum with Mr. Justice Moore, the other judge of assize, to register the claimant. Mr. O'Connell, who was at the assizes, upon a special retainer, and who had not argued the case before Mr. Baron Pennefather, then went before Mr. Justice Moore to endeavour to prevail upon him to decide against the claimant, and strongly pressed upon him the impropriety of his deciding not according to his own opinion derived from hearing the arguments of counsel on the law, but because he had been told by another judge that he would have decided so. The counsel on the part of the claimant relied upon the decision of Mr. Baron Pennefather expressed in his memorandum: and Mr. Justice Moore, although he was entirely with Mr. O'Connell in thinking that the claimant had no title to be registered, considered himself bound by Mr. Baron Pennefather's memorandum, and registered Mr. Becher the claimant. Mr. O'Connell then went before the registering barristers, of whom three had been appointed under the 66th section of the Irish Reform Act. They all sat together for the occasion, and Mr. O'Connell urged to them, that "though they were bound by the decision of the judge in the individual case of Mr. Becher, yet that it ought not to be considered as establishing a principle for the registration of non-resident freemen." The barristers however (although two of them at least thought that such freemen ought not to be registered) considered themselves bound by the decision of Mr. Baron Pennefather, and the non-resident freemen were consequently admitted on the register.

The cases cited on both sides were the *Longford* (*e*), *Galway Town* (*f*), *Galway County* (*g*), *Clonmel* (*h*), *Carlow* (*i*), and *Monaghan* (*k*), and the arguments used were similar to those urged in those cases.

The Committee decided that they could not consider any objection to a voter except in one of the three following cases:—

First, If there is an irregularity in the manner in which the vote is registered.

Secondly, If it shall appear that the objection has been taken at the time of the registration.

Thirdly, If the objection arises out of circumstances which, being subsequently to the time of registration, affect the goodness of the vote at the time it was given.

That in all other cases the Committee will consider the register as conclusive.

The case was then argued upon its merits.

Mr. Thesiger against the vote.

Non-resident freemen have no right either to be registered or to vote for counties of cities in Ireland.

The decision of Baron Pennefather, by which non-resident freemen were placed upon the register of voters for the county of the city of Cork, is in direct violation both of the spirit and the words of the Irish Reform Act.

If the words by which residence is sworn to, are omitted in the affidavit of a freeman at the registration, his vote is bad, unless it is proved that he was actually resident both at the times of the registration and of his voting.

One of the principal objects of the framers, both of the English and Irish Reform Acts, was to put an end to the system of voting by non-resident freemen, who, unconnected by local feelings with the place for which they claimed a right to return representatives, and generally unable from their poverty even to travel there to exercise their right without pecuniary assistance to defray the expenses of their journey, formed a body of men peculiarly open to corruption, and always productive of great expense to candidates for a seat in parliament. In the English Reform Act, where the regis-

(*e*) P. & K. 179.
(*f*) P. & K. 392.
(*g*) P. & K. 511.
(*h*) P. & K. 425.
(*i*) P. & K. 394.
(*k*) *Ante*, p. 31.

tration is annual, this object was accomplished by the provisions of the 32d section, which provides, that no freeman shall vote unless he is registered, and that no freeman shall be registered unless he has resided, for six calendar months previous to the 31st of July, within seven statute miles from the polling place of his city or borough. Some doubts, however, arose on the construction of this section, whether a freeman who had resided for the six months previous to the 31st of July, and had been registered accordingly, lost his right of voting by changing his residence to a greater distance than seven miles from his city afterwards. This point was argued at great length before the *Rochester* Committee, in *Hermitage's case* (*l*), and they determined that a registered freeman did not lose his right of voting for the year for which that register was to last, by a change of residence, after it had been made. This decision, however, in a great measure depended upon the difference between the English and the Irish Reform Acts, (which was expressly pointed out in the argument,) in making the disqualification of non-residence dependent upon a period antecedent to the formation of the register, and not to the time of voting.

By the provisions of the Irish Reform Act, any person whose name has once been placed on the register, is entitled to vote at every election which may occur within eight years after his name has been so inserted. It would have been, however, contrary to the spirit of all the Reform Acts, had a freeman who happened to be resident at any one period for six months within seven miles of his city or borough, been allowed for more than seven years afterwards to have the right of voting for it, to whatever distance he might have shifted his place of abode. The legislature, consequently, most carefully, throughout the Irish Reform Act, has re-

(*l*) *Ante*, p. 83.

quired the residence to entitle a freeman to vote, to be for a period antecedent both to his voting and registration, and not to the 31st of July, or day up to which the register is to be made only, as in the English Reform Act. Thus the 9th section of the Irish Reform Act, by which the rights of freemen are reserved, provides, "that all freemen, freeholders, and persons who by reason of any corporate or other right, are now by law entitled to vote at any election of a member or members to serve in parliament for any city, town, or borough, and all persons who, by reason of any marriage or service, or of any statute now in force, shall be at any time hereafter admitted to their freedom in any city or borough sending a member or members to parliament, shall, after such registration as is directed by this act, *but so long only as they shall reside within the said city, town, or borough, or within seven statute miles of the usual place of election therein,* have and enjoy such right of voting as fully and in like manner as if this Act had not been passed." In order, besides, more fully to enforce residence as a necessary condition to be required of a freeman, previous both to registration and voting, the legislature has imposed two oaths, one of which, by the 19th section, the freeman is required to take in order to verify his title before the registering barrister, previously to his being registered; the other, of which by the 54th section, any candidate or his agent may require the freeman to take, previously to his being permitted to vote. The oath which must necessarily be taken previously to his registration by the freeman, according to the provisions of the 19th section, is that in the Schedule C, No. 9, and it is in these terms:—"I A. B., of &c., *in* the city (or town or borough,) of ——, merchant, (or &c. *as the case may be,*) do swear that I am a freeman, or other corporate officer, of the said city, town, or borough, having a right to vote at elections for the said city (&c.) of ——, *and that I am, and for the*

last six months have been, a resident within the said city (&c.) of ——, or within seven statute miles of the usual place of election in the said city, (town or borough,) [as the case may be.] So help me God." The oath which every freeman may be required to take previously to his polling, according to the provisions of the 54th section, is that in Schedule B, and is in these terms:—" I A. B. do swear that I am the same A. B. whose name appears registered in the certificate or affidavit now produced; *and that my qualification as such registered voter still continues,* and that I have not before voted at this election." It is impossible, therefore, if the provisions of the Irish Reform Act were complied with, that any non-resident freeman could be registered, much less vote for any city or borough after it had been passed. How could General Barry, for instance, swear that he was, and for the last six months had been, a resident within the said county of the city of Cork, or within seven miles of the usual place of election in the said county of the city, as he ought to have been required to do at the registration?

The argument, however, which weighed with Mr. Baron Pennefather, and most probably will be pressed upon the attention of the Committee here, was, that freemen of counties of cities (as Cork is) were not intended to be included in the purview of the Irish Reform Act, because the words, " counties of cities" do not occur in the 9th section of it, where the rights of freemen are reserved; and upon this assumption the affidavits and certificates of registry have been altered from the forms prescribed by the Reform Act, in the manner in which they are now presented to the Committee. It is difficult, however, to conceive how such an argument could be maintained, when the 9th section expressly mentions the freemen entitled to return members for any " city, town, or borough," and the 62d section as expressly enacts, that the words, " city, town, or borough," used in this

Act, shall be construed to include all places, whether corporate or otherwise, entitled to send a member or members to parliament." Unless, therefore, the county of the city of Cork is held not to be a place entitled to send members to parliament, its freemen must be held to be included within the 9th section of the Reform Act; and if so, unless they are resident, they have no title either to be registered or to vote.

It is needless to question the power which has been asserted, of altering the forms prescribed by the Reform Act. It has obviously been assumed to revive the franchise of a body of persons, whom it was the object of that Act to deprive of it, and as the franchise itself must be pronounced to be extinct, the means which have been employed to enable it to be exercised, must also be deemed to have been erroneously resorted to. Whatever weight might have been attached to the decision of Mr. Baron Pennefather, must be now considered as at an end, for this very question has been lately under the consideration of the twelve judges in Ireland, and they came to a decision (in which Baron Pennefather, upon further consideration, concurred,) that non-resident freemen had no right to be registered. (*m*)

It is to be hoped that the decision of this Committee will coincide with that of the twelve judges in Ireland, and that they will remove from the poll a large body of men who, by a mistaken decision, have been registered and permitted to vote, in direct opposition to one of the main objects of the Reform Act.

Mr. Serjt. Merewether in support of the vote.

It is a very important feature in this case, that non-resident freemen have always voted at elections for the county of the city of Cork, both before and since the Reform Act, for it shows that the opinion entertained by the law authorities in Ireland was, that the Act did not,

(*m*) See Molyneux on Registration, p. 32.

and ought not to apply to the freemen of counties of cities. Had it been their intention originally that it should have applied to those freemen, they would have introduced some special enactment to that effect in the Act itself. At any rate, after it had been judicially decided that they were not comprehended within the Act, and in consequence of that decision a large body of them had actually voted, they would have brought in a bill in the ensuing session of parliament to explain the true construction of the Act.

It is an incontrovertible principle of law in the interpretation of statutes, that a right which has once existed cannot be taken away by an Act of Parliament, without express words to that effect. The rights of freemen, both resident and non-resident, to vote at elections for counties of cities, is one of the most ancient and undoubted in the kingdom. A few sessions, indeed, before the passing of the Reform Act, the 4 Geo. IV. c. 55, was passed for the express purpose of consolidating and amending the law then in force with regard to the election of members of parliament for counties of cities and counties of towns in Ireland. In the 30th, 31st, and 32nd sections of this Act, the most minute directions are given for the keeping of a registry book of freemen in all these counties of cities and of towns. The right of General Barry, therefore, to vote after his name had been inserted in the register book, according to the requisitions of this statute, was complete and unquestionable, unless there is some express provision in the Reform Act to take it away.

The preamble of the Reform Act, which states that "Whereas it is expedient to extend the elective franchise to many of his Majesty's subjects in Ireland who have not heretofore enjoyed the same," manifestly shows that it was not the intention of the legislature at that time to diminish, but to extend, the elective franchise. This intention appears still more clearly from the Act

going on to provide, by its 1st and 2nd sections, in the case of counties, not counties of cities, that in addition to the persons then by law qualified to vote, leaseholders and copyholders should enjoy the same franchise. The 3rd section still further shows the intention of the legislature not to destroy existing rights of voting, and specially provides, that nothing in the Act shall take away, or in any manner affect the rights of voting in counties at large, which then existed, with the special exception contained in the 4th section, of the right of voting for counties in respect of the same premises which would give the right of voting for a borough. The legislature having thus specified the rights of voting to be enjoyed in elections for counties at large, proceeds, in the 5th section, to define the rights that are to be enjoyed in counties of cities and counties of towns, and following the same system which it adopted with regard to the former, it enacts, that "*in addition to the persons now by law qualified to vote* at the election of such member or members," £10 freeholders, £20 leaseholders, and £10 householders, shall also be entitled to vote, if duly registered; with a special proviso, applying to the £10 householders alone, that they shall not be registered unless they have occupied the same for six calendar months previously to the time of their registry, and paid all but their last half year's grand jury and municipal cesses and rates. The 6th section is, to a certain degree, restrictive of the elective franchise in counties of cities and of towns, for it provides that no freeholder shall be admitted to register or vote for them in respect of a freehold of less than £10 yearly value, with a special reservation, however, of the rights of the then existing 40*s.* freeholders. The rights of voters in counties at large, and of cities and towns, having thus been disposed of, the Act proceeds, in the 7th section, to provide for the representation of cities, towns, and boroughs, not being counties in themselves,

and in these it bestows the right of voting upon the £10 householders, with a similar proviso for their occupation of their premises for six months previous to the time of their registry, and for the payment of their grand jury and municipal cesses and rates, as is contained in the section providing for the rights of voting of the same class of voters in counties of cities and of towns. The next section, the 8th, provides both with regard to cities and towns, and also to counties of cities and of towns, that no freehold of less annual value than £10, except in certain specified cases, should confer the right of voting, and it is observable that as the provisions of this section were intended to extend to counties of cities and of towns, that they are expressly mentioned in it. The 9th section, which has been so much relied upon by the other side, was only intended to take away the right of voting from the non-resident freemen in cities, towns, and boroughs, and not in counties of cities and of towns which are not mentioned in it, as they were in the preceding section, and indeed throughout the Act, in all the provisions which were intended to apply to them.

It is a principle of construction, that if one clause of a statute contains certain words, and another leaves them out, something different from the former is meant to be implied in the latter; and it is very reasonable to apply this construction to the 9th section of the Reform Act, because it will make it coincide with the intention expressed in the preamble, of extending the elective franchise, and in the 5th section, where the new rights of voting in counties of cities are specially conferred upon the different classes of freeholders, leaseholders, and householders, "*in addition to the persons then by law qualified to vote*," of whom freemen, whether resident or not, formed a part. At any rate, if the legislature ever intended to exclude non-resident freemen of counties of cities and counties of towns from voting, the statute is

totally silent on the point, and it would be too much for the Committee to import a fresh clause into it to that effect.

The 55th section, indeed, confirms all laws, statutes, and usages then in force with regard to the election of members to serve in parliament, save so far as they were respectively repealed or altered by the Act. In what part of the Act, however, is there any repeal of the 4 Geo. IV. c. 55, or alteration of the ancient usage, by which all freemen of counties of cities voted for members of parliament? It is indeed admitted by the other side, that the 9th section is not sufficient of itself to exclude from voting any freeman of a county of a city, and they are, therefore, obliged to have recourse to the 62d section to support their case. That section does not include, under the words "all places, whether corporate or otherwise, entitled to send a member to parliament," cities or towns which are counties of themselves. It was intended to meet the case of unincorporated towns, the rights in which might have been doubtful, but for this clause, and to those only, does it extend.

One of the principal objections which has been urged against this vote is the irregularity in the affidavit or oath made at the registration. This, however, is not a tenable position, for the assistant barrister is required, by the terms of the 20th section, to take care that such oaths shall be agreeable to the forms hereby prescribed, or *as near thereto as may be.* There is no form of oath in the schedule which applies to the freemen of counties of cities or counties of towns. The barrister having, therefore, the power, under the words of the 20th section, of administering an affidavit, as near as might be to the forms given in the schedule, exercised a judicious discretion, by administering to the freemen of a county of a city, the form of affidavit provided for the freemen of cities and towns, with the simple omission of the words indicative of residence, which no part of the sta-

tute rendered imperative upon the freemen of counties of cities and of towns. It would be absurd, indeed, to contend that the barristers had not the power of varying the forms of affidavits given in the schedules of the Reform Act, according to circumstances. Otherwise, indeed, no copyholder would ever be enabled to be registered, or to vote in Ireland, although the Act expressly gives him the franchise to do so, for there is no form of affidavit whatever given in any of its schedules for copyholders.

Whatever difficulties the Committee may find in the construction of this Act, from attempts which have been made on the other side to confuse its enactments, it is hoped that they will not deviate from the sound decision which has been arrived at upon this subject by one of the best and most learned judges in Ireland, and that their determination will be in favour of the franchise of the freemen of the counties of cities and of towns.

The Committee decided, "That if, in the affidavit on which a freeman is registered, the words by which residence is sworn to are omitted, the vote is bad, unless it can be proved that, in point of fact, the freeman so registered was resident according to the Act, both at the time of registration and at the time of voting. (*n*)

"That the vote of General Barry is not a good vote, and must be struck off the poll."

Application for Commission.

13th & 14th April. An application, by a sitting member, for a commission to examine witnesses in Ireland, was refused to be granted.

Mr. Pollock, immediately after the Committee had come to their resolution, in General Barry's case, applied on the part of the sitting members for a commission to Ireland to examine witnesses, under the 42 Geo. III. c. 106. This was opposed on the part of the petitioners, on the ground that the notice had not been served upon them in due time. Evidence was then adduced to account for the delay.

The evidence was, that the petition was presented on the 27th of February, and that the day after it had been

(*n*) See also *post*, p. 297.

presented, the sitting members called upon a gentleman practising as a special pleader in the Temple, and requested him to communicate to their agents in Cork that such a petition had been presented, and to transmit it to Cork. He procured an office-copy of the petition, and sent it in a parcel to Bristol, in order that it might, by means of the steam packet, be conveyed to Cork at an earlier period than it would have been carried by the post. Some accident, however, happened to the steam packet, and the parcel containing the petition did not reach Cork till two days later than if it had been sent by the post. The sitting members' agents at Cork immediately sent back instructions, by the post, to their correspondents in London, that counsel's opinion should be taken as to whether it would be desirable that a commission should be applied for or not. These instructions reached London on the 10th of March. The opinion of counsel was immediately taken; and in compliance with it, notice of the sitting members' intention to apply for a commission was served on the petitioners agents in London on the next day, the 11th of March. It appeared that a notice of a similar kind had been served upon the sitting members by the petitioners' London agents on the 27th of February, the same evening the petition was presented.

teen days had been suffered to elapse without any notice having been served on the petitioners.

Mr. Pollock in support of the application.

There has been no improper delay. The notice was served upon the petitioners as soon as it was reasonably possible to have done so. It could not be expected that the sitting members should take a step of this decided kind, without having first consulted their agents, and it appears that the notice was served upon the petitioners directly the expediency of serving it was made known to the sitting members, from the facts communicated by their agents, and the opinion of counsel upon those facts.

It possibly may be argued, however, that the Com-

mittee cannot grant this commission upon the words of the 5th section of the 42 Geo. III. c. 116, which provides that "no commission, as aforesaid, shall issue under this Act, except the party or parties intending to apply for the same shall serve a notice on the opposite party or parties, as soon as the petition in question shall be presented to the House of Commons, of his intention to apply to the Select Committee for such commission as aforesaid;" but if the words "as soon as the petition in question shall be presented," are to be construed literally, the effect will be to render the statute inoperative as to sitting members, who can never know when a petition is to be presented against them. The proper construction of the statute is, that the notice shall be given as soon as it shall be practicable to do so after the petition has been presented, in the same way that the Court of King's Bench has always held, that where the 17 Geo. II. c. 38, directs that appeals from rates should be made to the next sessions, it must be understood to mean the next practicable sessions at which an effectual appeal can be lodged. This indeed was the construction put upon the statute in question in the *Drogheda case*(*o*), where two days elapsed between the presentment of the petition and the service of the notice. The facts in that case were stronger than in the present against any deviation from the words of the statute, for there the application was made by the petitioners, who might choose their own time for presenting their petition, and were not therefore entitled to equal indulgence with the sitting members. Mr. Rogers says(*p*) "It is difficult to understand how this provision can be strictly complied with by a sitting member, to whom it may become essential to apply for a commission. The only notice that a sitting member, or those in his interest, have of a petition, is from the circumstance of its being presented; or if he be absent, by the

(*o*) Cor. & Dan. 111.

(*p*) Law and Practice of Election Committees, 108.

notice which his agents receive from the Speaker, to attend on a particular day for the purpose of striking the Committee; in either case, therefore, it is manifest that the notice of his intention to apply for a Committee cannot be delivered as soon as the petition is presented; besides, until he has read the petition, and considered its allegations, it is impossible that he should be prepared to determine whether or no a commission may be necessary for his defence. The inconvenience arising from the manner in which this provision is worded, was felt by the Committee in the case of *Drogheda;* in that case the strict words of the statute were disregarded, even in the instance of the petitioner; and surely there is much greater necessity of a liberal construction of the words of the statute in the case of a sitting member."

In this session a commission has been granted to the sitting members for Dublin, and surely here, after the diligence that has been exerted, it is not too much to ask as a right, from the Committee, to be allowed to show them reasons why a commission should be granted to the sitting members for Cork also. There is no pretence for a complaint on the other side, of having been obliged to bring over their witnesses, or having prepared their case without a knowledge of the sitting members' intention of applying for a commission, for the time originally appointed for hearing this petition was the 2d of April, which was afterwards extended to the 9th, so that they had first twenty-two, and afterwards twenty-nine days knowledge of the proposed application. Independently of which, as it is always a matter in the discretion of a party, whether he will apply for, and of a Committee, whether they will grant, a commission, it is the duty of all parties to prepare themselves to proceed before a Committee exactly as if no such notice had been given them.

Mr. Austin against the application.

The petitioners have not used sufficient diligence, and they cannot claim a commission as of right.

With respect to their alleged diligence, it is admitted that they suffered thirteen days, between the 27th of February and the 11th of March, to elapse before they gave notice. Now their agent in Cork might have served it upon the petitioners in Cork, where all the parties were living, even if the sitting members can be excused for not having given notice themselves in London. But, at all events, the sitting members ought not to be allowed to avail themselves of their own ignorance, as an excuse for not serving the notice for so long a period as thirteen days, upon the agents of the petitioners in London.

The Committee cannot legally grant this indulgence. The statute is imperative, that the parties intending to apply for a commission shall serve a notice on the opposite party or parties "as soon as the petition shall be presented." The meaning of these latter words, no doubt, is, that the notice shall be served as soon after the petition is presented as it can practically be served. In the *Drogheda case*, the petition was presented on a Friday, and the sitting member was searched for and could not be found on the Saturday, but he was regularly served on the following Monday. The Committee properly held that the notice was served as soon as it could practically be. The service was, in fact, immediate; the attempt having been made on the Saturday, Sunday being a *dies non*, and the service being effected on the Monday. But here thirteen days, during which thirteen services might have been given, were suffered to elapse before any attempt was made. The arguments drawn from Mr. Rogers's book, do not apply to the present arrangement of the House, for members in town have the votes on their breakfast table every morning, so that a day cannot elapse, after a petition has been presented against a member, without his being apprized of it, if

he is in London. It is in evidence, however, that the sitting members here were apprized of the petition being presented, by a notice served on them on the evening of its presentation by the petitioners; and, independently of this, they must have been long aware of the intention to petition, as the mere fact of their having 250 non-resident freemen on their poll must have given them sufficient cause to expect it.

In the *Dublin case* of this session, notice of an application for a commission was given by the sitting members on the very night on which the petition was presented; and, in *this* case, the petitioners had served the sitting members with notice of their intention to apply for a commission, if necessary, on the night the petition was presented. Then, not only has there been an interpretation practically put upon the enactments of the statute, but it is evident that there is no difficulty in complying with them. The arguments drawn from the practice of quarter sessions as to appeals, are in the petitioners' favour, for such appeals are entered at the nearest practicable sessions, although they may be respited till the next, if the parties are not ready for trial.

The Committee decided, "That the notice served upon the petitioners' agents, of the intention of the sitting members to apply for the issuing of a commission, was not given as required by the Act of Parliament, and that the application cannot be entertained."

The petitioners then proceeded to put in the affidavits and entries of the certificates of registry of three other non-resident freemen, which were exactly in the same form as those of General Barry, and they were struck off without opposition.

Henry Hedges Becher's case.

The voter was the individual who had been rejected by the registering barrister as a non-resident, and appealed to the judges of assize, as has been already stated. The

Evidence admitted to prove that a person who claimed as

a non-resident freeman was actually a resident freeman, although no attempt to prove his residence had been made before the registering barrister.

certificate of the registering barrister was put in, dated 16th August, 1832, stating that the voter had appeared before him at the special session for registering voters in that year, claiming to be registered as a freeman, and was rejected by him on that day "as not having resided for the last six months in the said county of the city of Cork, or within seven miles of the usual place of election in the said county." A notice of appeal, dated the 16th August, 1832, by the voter to the judges of assize, from the decision of the registering barrister, was then put in, together with an affidavit sworn by him on the 1st of October, 1832, before Mr. Justice Moore, at the general assizes for the county of the city of Cork, upon his appeal, "that he was a freeman of the county of the city of Cork, having a right to vote at elections for the said county of the city of Cork," and a certificate of registry of the same date, under the hand of Mr. Justice Moore, that the voter was duly registered by him as a voter "for this city, in right of his being a freeman." It was stated by the clerk of the peace, that the affidavit in this case was the only written one in that form, and that the other affidavits of the non-resident freemen were all printed from it.

Mr. Serjt. Merewether, in support of the vote, proposed to offer evidence to prove, that although the voter, in order to try the right, had chosen to be registered as a freeman without reference to his residence, yet that in fact he had had lodgings in Cork, in which he had resided, so as to give him the right to claim as a resident freeman.

Mr. Harrison and Mr. Austin objected, that the voter had no right to insist now upon a different title from that which he had previously urged before two preceding courts. The *Monaghan* Committee(*q*) had decided, that parties should not be allowed to urge before Committees

(*q*) *Ante*, p. 32.

any points they had not relied upon in the barrister's court. The *Clonmell*(*r*) and *Rochester*(*s*) had determined that parties should not be allowed to bring forward different evidence from what they had relied on in the court below. Here the voter had not suggested, either in the barrister's court or on appeal to a judge, that he was resident in Cork; and it would be dangerous were Committees to allow points to be raised and witnesses called upon to support them, for the first time, before a tribunal sitting at so great a distance, and before which it would be difficult to bring forward evidence in contradiction, which might readily have been procured before a court in Ireland.

Mr. Serjt. Merewether.

The voter may have chosen to dispute, for the sake of others, the right of having the oath as to his residence imposed upon him, although, individually, he might have been able to have taken it with a safe conscience.

The Committee stopped the counsel, and intimated their opinion, "that the evidence ought to be received."

Evidence was then given in order to prove the residence of Mr. Becher (the voter) in Cork, since October, in 1831. The Committee, however, after hearing Mr. Pollock in support of the vote, and Mr. Harrison against it, determined the vote to be bad.

After the decision in this case, it was stated by Mr. Harrison, that as it had been intimated by a member of the Committee that it was desirable that evidence should be given in relation to the proceedings before the judges on the appeal in Ireland, Mr. D. O'Connell, the member for Dublin, was in attendance, and willing to be examined. Mr. O'Connell was accordingly called in, and gave evidence to the effect mentioned before in the note to p. 278.

At the conclusion of Mr. O'Connell's examination,

(*r*) P. & K. 429. (*s*) *Ante*, p. 75.

Mr. Serjeant Merewether applied to the Committee for an adjournment, to enable the sitting members to procure the attendance of witnesses from Ireland, on the ground of the sitting members having been taken by surprise, by the Committee deciding in opposition to the judgment of Mr. Baron Pennefather, and by their refusal to grant the Commission.

The Committee resolved, "That they would consider the application next day, provided there were laid before them a statement of the names of the witnesses, not then in London, whom it was proposed to call, and the facts it was intended that they should prove."

This statement was not handed in the next day, but was produced on the 16th, when the application was renewed, and refused.

April 15th. The decision of the Committee, upon the rights of the non-resident freemen, having affected a large body of the voters on the poll, the agents on both sides, at the suggestion of the Committee, met on the evening of the 14th April, and agreed that the votes of 224 non-resident freemen (including those already decided upon) should be struck off the poll; and they were struck off accordingly. The sitting members being then in a great minority on the poll, Mr. Serjt. Merewether opened their case. The first case taken on their part was that of Michael Cogney.

Michael Cogney's case.

April 15th. No oath is required to be taken by Roman Catholic voters in Ireland previous to their polling, except those en-

The voter, who was a Roman Catholic, had voted for the petitioners, and the objection was, that he had not taken the oath required to be taken by Roman Catholics, under the Roman Catholic Relief Act, 10 Geo. IV. c. 7.

The arguments in this case were the same as in the *Carlow case* (*t*).

The Committee determined "That it is not necessary for Roman Catholics in Ireland to take any oaths except

(*t*) P. & K. 399.

those specified in the Reform Act." The Committee, at the same time, intimated, that in coming to this determination they were mainly influenced by the consideration that a session had intervened since the decision in the *Carlow case*, without any legislative measure revising that decision. joined by the Reform Act.

On the 18th of April, Mr. Pollock, at the meeting of the Committee, stated, that the sitting members did not intend to defend the return any further.

Mr. Austin then observed, that the Committee had not expressly decided upon the right claimed by non-resident freemen, but had couched their resolution in terms which might be considered applicable to the case of General Barry only. As it was highly desirable that the question upon the right itself should be set at rest, he should propose to consider the case of one of the non-residents, still remaining upon the poll, upon that general ground alone. This was accordingly done, and the vote of Edward Doherty, who was admitted to be a non-resident freeman, was then submitted to the Committee, who resolved, "That Edward Doherty, of Bandon, not being resident within seven statute miles of the usual place of election, in the city of Cork, had no right to vote as a freeman at the election for the said city, and ought to be struck off the poll." Mr. Pollock consented that the other voters, in the same situation with Edward Doherty, should also be struck off the poll.

The Committee then resolved, "That Lieut. Col. Chatterton and M. Leycester, Esq. were not duly elected; that Daniel Callaghan, Esq. and Herbert Baldwin, Esq. were duly elected, and ought to have been returned, and that neither the petition nor the opposition to it were frivolous or vexatious."

These names were subsequently struck off the register by the town clerk, in obedience to the directions of the Speaker, in a letter addressed by him to that officer, in

compliance with the resolution of the House of the 11th of June, 1832 (*u*).

(*u*) This resolution was rescinded on the 15th of June, 1835, and another resolution of a similar nature was passed on the 24th of June, 1835. Neither of these resolutions (both of which are printed below) appear applicable to the cases of Scotch registers, which, by the 25th section of the Scotch Reform Act, Committees themselves have the power of altering, and it possibly may become a question whether the House has any power to direct any alterations in the Irish registers, as no provision for that purpose is contained in the Irish Reform Act.

Resolution of 11th June, 1832.

Resolved, "That in all cases where a Select Committee appointed to try the merits of an election for any county, city, or borough, report to this House that they have altered the poll, by adding or striking out the names of any voters on such poll, Mr. Speaker shall issue his directions thereupon to the clerk of the peace, town-clerk, or other officer, as the case may be, with whom the register of the voters of such county, city, or borough, is deposited, to alter and amend such register, by striking out the names of such voters as have been struck off the poll, and by adding such names as have been added to the poll by such Select Committee."

Resolution of 24th June, 1835.

Resolved, "That in all cases where a Select Committee appointed to try the merits of an election for any county, city, or borough, report to this House that the names of any voters ought not to have been placed on the list of voters, or that the names of any voters have been unduly omitted from such register, Mr. Speaker shall issue his directions thereupon to the clerk of the peace, town-clerk, or other officer with whom the register of voters of such county, city, or borough, is deposited, to amend such register, by striking out or adding names to such register, as the case may be, in conformity to the report of such Select Committee."

The debate on the passing this resolution is printed in the Mirror of Parliament for 1835, p. 1397, *et seq.*

CASE XIV.

INVERNESS-SHIRE CASE.

The Committee was appointed on the 2d of July, 1835, and consisted of the following Gentlemen:—

Hon. A. H. Ashley Cooper, M.P. for Dorchester, (*Chairman.*)

Wm. Turner, Esq. M. P. for Blackburn.	Joseph Brotherton, Esq. M.P. for Salford.
Morgan O'Connell, Esq. M.P. for Meath.	Sir Charles Hen. Coote, Bart. M.P. for Queen's County.
Richard Walker, Esq. M. P. for Bury.	J. Cressett Pelham, Esq. M.P. for Shrewsbury.
Lord Viscount Mandeville, M. P. for Huntingdonshire.	Richard Longfield, Esq. M.P. for Cork County.
Wyndham Lewis, Esq. M. P. for Maidstone.	Leonard Dobbin, Esq. M.P. for Armagh.

Petitioners:—1st. James Murray Grant, Esq.; 2d. Electors in the interest of Mr. Grant.

Sitting Member:—The Chisholm.

Counsel for Petitioners:—Mr. Harrison and Mr. Pollock.

Agent:—Mr. Macqueen.

Counsel for Sitting Member:—Mr. Serjeant Spankie and Mr. Serjeant Heath.

Agents:—Messrs. Spottiswoode and Robinson.

THIS was a case of scrutiny, the sitting member having had 265 votes, and Mr. Grant only 240. The principal objection relied on by the petitioners was against a class of 29 voters whose qualifications were situate in a district called Grant Town, which was

stated by their counsel at the opening of the case to have been part of Inverness-shire previously to the passing of the Reform Acts, but to be locally situate within the limits of the counties of Elgin and Nairn, and consequently to be within those counties for the purpose of elections, under the provisions of the third section of the Scotch Reform Act. It was also stated, that the greater part of these voters had, at the first registration after the passing of the Reform Acts in 1832, been rejected by the sheriff for Inverness-shire, but that they had appealed from his decision to the Scotch Court of Review, which then, under the provisions of the twenty-fourth section of the Scotch Reform Act, consisted of the sheriffs of Elgin and Nairn, Inverness-shire, Orkney and Shetland. This Court reversed the judgment of the sheriff of Inverness-shire, and placed all the voters from the Grant Town district on the register for that year. No objections were made to these voters at either of the subsequent registrations in 1833 and 1834.

Proof of the Poll.

Poll-books received which had for a short time been in the custody of a clerk of the agent of the sitting member, that clerk having proved that they had not been altered whilst in his custody.

The poll-books were produced by the sheriff-clerk of Inverness-shire, who had received them from the sheriff at the time that the numbers were declared. He deposed that he had, within forty-eight hours after he had received them, carefully examined them with another person; that he had since kept them in his inner office locked up in a box, of which he had the key, and that they were unmutilated and unaltered. Upon cross-examination he stated that he had been absent from Inverness and at Edinburgh for seven days, during which time his deputy had the key of this box, together with the keys of the boxes of the other records of the county, and that he himself was in the habit of giving the books out to his clerks, of whom he had four, for

the purpose of their being inspected by the agents of the parties.

Mr. Harrison, upon this evidence, proposed to put in the poll.

The whole of the proof of the due custody of the poll-books must be given at once; see *Roscommon case, ante*, 269.

Mr. Serjt. Heath stated that he should object to the reception of the poll-books, and called upon the Committee to inform Mr. Harrison that he must close his case as to the poll-books in the first instance. A short discussion then took place.

The Committee resolved that the evidence in support of the production of the poll-books must be closed before Mr. Serjt. Heath proceeded.

The sheriff of Inverness-shire (William Fraser Tytler, Esq.) was then called, who deposed that he had, at the close of the poll, received the poll-books from the deputy-sheriffs, with whose hand-writing as well as that of the poll clerks he was perfectly acquainted; that he had gone through every single page, and every single entry in the books, running his finger down each column, and counting up the numbers (*a*), to see that they were in consecutive order, before he declared the poll, and that he had made a similar examination of the books since he had been in London, and was able to declare that they were in the same state as when he delivered them to the sheriff-clerk.

Mr. Serjt. Heath against the reception of the poll-books.

Committees have always required the most strict proof of the careful custody of the poll-books before they have received them in evidence. The reason for this excessive strictness is the extreme facility with which, from the manner in which they are ordinarily made up, forgeries and alterations may be made in them to any extent. The simple addition of a scratch oppo-

(*a*) The votes in this case were placed in numerical order, as they were polled for each candidate, according to the provisions of the thirty-second section of the Scotch Reform Act.

site to the name of a voter and under the name of a candidate, might otherwise have the effect, before a Committee, of altering the result of an election. It is true, from the manner in which these books have been made, that the difficulty of altering them is increased, but the principle remains the same, and ought not to be varied to meet the particular circumstances of every particular case.

If, however, these books are received, the Committee must determine to receive books of the custody of which, during the whole time that the sheriff-clerk was in Edinburgh, they have no account at all, and of which the careful custody, even during the time that he was in Inverness, is by no means satisfactorily established. It would have been in the power of the petitioners to have removed all difficulty in the case by calling the sheriff-clerk's deputy and clerks. This, however, they have not done, and the reason for this omission will easily be conjectured by the Committee when they have heard our evidence, by which we shall satisfactorily establish not only a want of due custody of the poll-books, but an actual delivery over of them into the custody of the most improper persons in the world to be entrusted with them, namely, the agents of the contending parties. In the *Roscommon case*(*b*) the Committee refused to receive the poll-books, on account of their having been left in the custody of the agents in the office of the clerk of the peace; in the present case we shall prove that the books were actually delivered out of the proper office into the hands of one of the agents, to be taken away to his own office, where he had full opportunity and leisure to make what alterations or additions he pleased. The same indulgence that was granted to the agent of one party was doubtless granted to the agents of the other; the Committee cannot, therefore, admit these books as evidence without overruling the decision of the *Roscom-*

(*b*) *Ante*, p. 268.

mon Committee, and in fact, deciding that the custody of the agents of the parties is the proper custody of the poll-books.

A witness was then called, who stated that he was clerk to Mr. Mackay, the agent at Inverness for the sitting member; that he had once borrowed from the sheriff-clerk's deputy, the poll-book for the Kilgussie district, in which the Grant Town voters had polled, carried it away to Mr. Mackay's office, where he kept it three hours, and made a copy of it, and then took it back again. During the time the book was in his possession, however, he declared that he had made no alteration in it whatever.

Mr. Harrison, in support of the reception of the poll-books in evidence.

The general and decisive distinction in cases arising upon the custody of the poll-books is, whether or not they have always continued in the proper custody, or whether they have at any time been taken out of it. If they have been always in the proper custody, the mere production of them by the proper officer, under whose charge they have been, is sufficient. If they have been taken out of the proper custody, all the persons under whose care or in whose hands they have been must be called, in order to prove that they are unmutilated and unaltered. The *Oxford case* (*c*) shows the strictness with which Committees have adopted this principle, for there the Committee refused to receive the poll-books when produced by the mayor, in whose custody they ought to have been kept, because they had been given by him into the care of his poll clerk Jacobs, but they did receive them after Jacobs had been called, and had satisfied them by his testimony that the books had not been tampered with whilst they were under his charge. In the *Roscommon case* the poll-books were proved to have been left in the charge of the agents of

(*c*) P. & K. 96.

the parties, but those agents were not called to prove that the books were unaltered whilst in their possession, before the Committee had determined that the books were not receivable, and the Committee subsequently refused to receive their evidence. No difficulty of this description arises, however, in the present case, for here the same witness who proves that the books were once out of the proper custody of the sheriff-clerk and his deputy, also proves that during that time they were unaltered and untampered with. In addition to this we have the testimony of the sheriff, that the books, on his late inspection of them, were in the same state as when he delivered them over to the sheriff-clerk at the close of the poll; and from the mode in which the books are made up, it is evidently almost impossible that any alteration could be effected in them. The Committee have, therefore, both moral and legal certainty that the poll-books are in the same state as when The Chisholm was, on faith of them, declared to be duly elected, and they ought therefore to be admitted in evidence.

The Committee resolved "That the poll-books should be received in evidence;" but they, at the same time, expressed their opinion that they had been kept in a very careless manner.

July 4th. Mr. Harrison submitted that as the principal question in the case was the right of the persons claiming to have qualifications in Grant Town, the proper course would be for the parties to deliver in statements of the rights of voting, under the 50th section of the 9 Geo. IV. c. 22, as had been done, since the Reform Acts, in the *Colraine* (*d*) and *Second Carnarvon cases* (*e*).

Mr. Serjt. Spankie objected to this course, and insisted that some particular vote ought to be brought before the Committee, in order to enable them to judge what would be the proper mode of proceeding. The first point of discussion would be, whether or not the register

(*d*) P. & K. 475. (*e*) P. & K. 436.

ought or ought not to be opened, as indeed had been determined on in the *Coleraine case* (*f*), before any statements of rights of voting had been interchanged.

The Committee determined "that the petitioners' case should be proceeded with."

James Finlay's case.

This was a voter from the Grant Town district. His claim to be inrolled, dated the 14th August, 1832, was put in, and it appeared by the indorsements on it to have been registered by the sheriff in that year, and to have been subsequently admitted by the Court of Appeal. It was admitted that he had voted in 1833 and 1834, and that his name had been suffered to remain on the register for both these years, without any objection having been made to it at the registrations in either of them. An objection was then taken against entering into the merits of this vote.

An objection cannot be entered into before a Committee to a voter whose name has been on the register for a Scotch county and unobjected to for two registrations, although, at a registration three years previously, his claim was objected to, and registered by the sheriff, and afterwards admitted by the Court of Review on appeal from the sheriff's decision.

Mr. Serjt. Spankie in support of the objection.

The decisions of Committees have been so unanimous upon the point of not opening the register in English cases, that it would be useless to do more than recapitulate the names of the *Petersfield*, *Oxford*, *Bedford*, and *Southampton cases*, in which that resolution was first arrived at in the session that immediately succeeded the passing of the Reform Acts, or again to repeat the reasons by which that resolution was supported, and which have now met with the general approbation of the legal profession. In the cases which have arisen upon the Irish register, the decisions of Committees have by no means been equally harmonious. In the earlier cases, as the *Longford* (*g*), *Galway Town* (*h*), *Galway County* (*i*), and *Coleraine* (*k*), the Committees opened the register, and indiscriminately admitted objections to be taken before them to any vote upon the poll. In the *Clonmel*

(*f*) P. & K. 503. (*g*) P. & K. 179. (*h*) P. & K. 306.
(*i*) P. & K. 512. (*k*) P. & K. 503.

case (*l*), however, the Committee restricted the objections before them to such votes as had been objected to bonâ fide before the registering barrister; and in the *Carlow case* (*m*) the Committee closed the register altogether. In the *Monaghan case*, in the succeeding session, the Committee restricted the inquiries not only to the votes that had been questioned before the barrister, but confined those inquiries to the very same points that had been agitated before him. In the present session, no Committee on an Irish case has altogether opened the register, for in the *Ennis* (*n*) and *Cork City* (*o*) *cases* the objections have been confined to cases disputed before the registering barristers; and in the *Youghal case* (*p*) the Committee refused to open the register at all. The prevailing course of decision therefore, even with regard to the Irish register, which is to last for eight years, and where there is only an appeal for the claimant and none for the objector against the judgment of the registering barrister, has been not to open the register and allow the discussion of votes which have not been previously discussed in the registering barrister's court.

If, however, Committees have been unwilling to open the register in English and Irish cases, in the former of which there is no appeal and in the latter only a unilateral one, from the decisions of the barristers, how much stronger are the arguments that can be urged against the opening of it in cases from Scotland. By the provisions of the Scotch Reform Act, the officer to whom the duty of deciding upon the claims to be inrolled, devolves in the first instance, is the sheriff for the county, a judicial officer generally of considerable experience at the bar, and to whom the adjudication upon the greater part of the civil business of the county is entrusted. Every person who has claimed to be registered for a county has a right to object before this

(*l*) P. & K. 426. (*m*) P. & K. 394. (*n*) *Post*.
(*o*) *Ante*, p. 279. (*p*) *Post*.

judge to the claim of any other person to be admitted, or to his continuance on the roll if admitted; and a form of objection adopted to either case is given in the Schedule H, part first. Even, however, if there should be no objection lodged, the sheriff is, by the provisions of the 17th section of the Act, obliged to investigate the title of every claimant, and satisfy himself that his right to be inrolled in the register has been primâ facie established. No person is therefore admitted on the register in Scotland until his right has undergone the test of a judicial inquiry. Any party, besides either claimant or objector, who is dissatisfied with the judgment of the sheriff, has the power of appealing to the Court of Review, consisting of three of the sheriffs "liable in attendance at the circuit for the district within which the county is situate;" and the judgments of this Court is, by the provisions of the 25th section, made "in all cases final and conclusive, and liable to no process of review;" and the sheriff is directed to alter the register according to them. There is however a further provision in the Act, "that nothing therein contained should be held to limit or restrain the powers of a Committee to take into consideration the validity of any vote or claim for registration admitted or rejected by the sheriff, or the judges of appeal, and to alter the register poll or return accordingly, in so far as concerns the election petitioned against." The registration, therefore, in Scotland is rendered more perfect than either in England or Ireland. For every case is determined by a competent and experienced judge; from him there is an appeal to a tribunal of three competent judges, and from them a further appeal lies, in case of a contested election, to a Committee of the House of Commons: and there is still a further remedy against the evil consequences of an erroneous decision by the registration being made annual, so that the mistakes of one year may be corrected by the decisions of a fresh body of

judges in the next. In the present case, for instance, had the decision of the Court of Review, in 1832, been unsatisfactory, the opponents of the Grant Town voters had the opportunity of attacking their validity before the sheriff at the registrations both of 1833 and 1834, and of appealing from his decision to the Courts of Review for three years, which would have, under the provisions of the 25th section of the Scotch Reform Act, consisted of a different body of sheriffs than that which decided upon them on the first registration in 1832, under the provisions of the 24th section of that Act.

When so perfect a mode of registration has been framed, it would obviously have been impolitic if the legislature had allowed any person to set its regulations at defiance, and appear before a Committee for the first time as an objector or claimant. The 25th section of the Reform Act, therefore, provides only against the limiting or restraining the powers of a Committee to take into its consideration the validity of any vote or claim for registration, admitted or rejected by the sheriff or judges of appeal; and it therefore must be held, that the powers of Committees are limited and restrained from taking into their consideration the validity of votes or claims that have not been admitted or rejected by the sheriff or judges of appeal, by whom the register, under the consideration of the Committee, has been made and revised; for the votes which have been on the register for the previous year, and are unobjected to, are neither admitted nor rejected, but left on as a matter of course. This indeed must have been the construction put upon the statute by the Committee in the *Linlithgowshire case*. There, in *Ritchie's case* (*q*), the Committee determined, that as Ritchie had neglected to appeal before the Court of Review his name should not be put on the poll. It is true that the Chairman is stated in the report

(*q*) P. & K. 262.

to have expressed an opinion that the Committee were aware of their power to enter into that case, but refused it in their discretion: but this opinion must be taken as the individual opinion of the Chairman, and not of the members of the Committee, in a body who can only be held to have assented to the simple resolution which is entered on their minutes. If, indeed, a Committee had the power of entering into the discussion of such cases, they could not, any more than any other judicial tribunal, refuse to exercise that power over every case legally brought before them. The present, however, is a much stronger case against opening the register than *Ritchie's*, for here there has not been a decision by the sheriff, as there had been in that case. The case is indeed precisely within the rule laid down by that Committee in *Rennie's case* (*r*), where they decided, that a voter who was on the register and had not been objected to before the sheriff, could not be objected to before a Committee; and in *Tait's case* (*s*), where they determined that they would not enter into the case of a voter unobjected to before the sheriff, but rejected by him and afterwards placed on the register by the Court of Review.

The decisions of the only Committee that has sat on a Scotch election petition since the passing of the Reform Acts, having thus been without a variation in favour of closing the register, is there any reason for this Committee departing from the previous decisions on the subject, and establishing a new rule of practice? If a register in England, formed from lists made out by ignorant overseers, and revised by a junior barrister, is to be conclusive in England, unless where objections have been found out by the attornies who alone are permitted to appear before him,—if a register in Ireland, made out by a barrister of six years standing, appointed by the Lord Lieutenant under the Reform Act, and with no appeal except when he has decided against the franchise, is to

(*r*) P. & K. 299. (*s*) P. & K. 300.

be (as has been twice determined) indisputable;—surely a register, framed annually by the chief civil officer of the county, before whom every case may be argued by counsel, and whose decisions, if wrong, are annually subject to the revision of three competent judges, ought not to be allowed to be questioned, and its authority called in question for the first time before a Committee in England, at a great expense to the parties, and with the disadvantage of judges and counsel who are not equally conversant with the law and customs of the country, as the sheriff and Court of Review must be. The only sound policy is to oblige parties not to speculate on the probabilities of an election occurring, or not occurring, in the ensuing twelvemonth, but to use their utmost endeavours in the tribunals of their own country to make every register perfect. If, unfortunately, both the sheriff and Court of Review in any county should err in their decisions, their mistakes may be set right, if there is no election, by the decisions of either the sheriff himself upon further consideration, or of a different Court of Review in the following year; if there is an election, by a Committee of the House of Commons, having the advantage of sitting as a court of appeal from two tribunals, before whom the cases have been previously discussed, and being, therefore, assured that every argument which the ingenuity of the counsel in the courts below could suggest, will be brought before them, and submitted in a clear and condensed shape for their consideration. In the present case no objection has been brought forward to the voter, for two registrations and three contested elections; it would have been sufficient for his security if no objection had been made to him at the present registration, but after having had nearly three years undisputed enjoyment of his right of voting, he may almost be said to have acquired a title to it by prescription.

Mr. Harrison against the vote.

The decisions of the Committees which have closed

the register in English cases, have been very far from meeting (as has been alleged on the other side) with the approbation of the legal profession. They have, on the contrary, been disapproved of by very high authorities, and were so little in unison with the intention of the framers of the English Reform Act, that in the bill which has been brought in this session by Lord John Russell, "to Amend the Registration," there is a special clause (*t*) to restore the old jurisdiction of Committees, which has been rendered doubtful by these decisions, and to give them the power of inquiring into the validity of all the votes upon the poll, whether they have been objected to before the revising barrister or not.

(*t*) The clause alluded to in this bill, which has been subsequently much discussed in Committee, and has not yet passed, was in these terms:—" And whereas in and by the said recited act, it is provided, 'That upon petition to the House of Commons complaining of an undue election, or return of any member or members to serve in parliament, any petitioner, or any person defending such election or return, shall be at liberty to impeach the correctness of the register of voters in force at the time of such election, by proving that in consequence of the decision of the barrister who shall have revised the lists of voters from which such register shall have been formed, the name of any person who voted at such election was improperly inserted or retained in such register, or the name of any person who tendered his vote at such election improperly omitted from such register; and the Select Committee appointed for the trial of such petition shall alter the poll taken at such election, according to the truth of the case, and shall report their determination thereupon to the House, and the House shall thereupon carry such determination into effect, and the return shall be amended, or the election declared void, as the case may be, and the register corrected accordingly, or such other order shall be made as to the House shall seem proper.' And whereas doubts have arisen as to the power and authority of any such Committees to examine into and decide upon the validity or invalidity of the vote of any person whose name appears upon such register, unless such vote had been objected to before the barrister appointed to revise the votes contained in such register. Be it therefore enacted and declared, that it shall be lawful for any such Committee, and they are hereby empowered to examine into and decide upon the validity and invalidity of the votes of all persons appearing in such register, whether the same shall have been objected to before the barrister appointed to revise such votes or not."

The effect, indeed, of closing the register has, in England, been, in several cases, to seat candidates in the House who have been in a very large minority of legal votes at the poll, and to afford an invitation for all manner of fraud and manœuvring at the registry. Voters have, for instance, in many cases (and in one, to my own knowledge, to the number of eighty,) been objected to by the overseers in counties, for the purpose of protecting them, for parties naturally avoid the trouble and expense of objecting to a man previously objected to, and then the overseers have abandoned their objections before the barrister, and the persons objected to on the list have remained good votes, unimpeachable before a Committee. The determinations of Committees have certainly varied as to opening the register in Ireland, but the best proof of the correctness of the decisions of those which have opened, is the number of bad votes that have been struck off by every one of them which have done so.

The Scotch registers stand, however, upon a different footing from those of both England and Ireland. There has been only one Committee, the *Linlithgowshire*, which has come to any determination upon them, and that Committee, by their chairman, expressly declared in *Ritchie's case*, that they were aware of their power to open the register, but thought it a question for their discretion. The determinations of the Committees in the English and Irish cases, where the register has been closed, have proceeded upon the supposition that they had no power to open it. There can be little doubt, however, that the *Linlithgowshire* Committee were right in their opinion as to their power, for no words could be conceived which would more fully give to Committees the power of examining into the merits of every vote upon the poll, than those words used in the 25th section of the Scotch Reform Act. By that section it is declared, "that nothing therein contained should be held to limit or restrain the powers of such Committee to take into con-

sideration the validity of any vote or claim for registration, admitted or rejected by the sheriff or the judges of appeal." No voter, however, can be placed upon any register in Scotland unless his vote has been previously admitted on the register by some sheriff, who is required by the 17th section of the Scotch Reform Act to examine the titles of every claimant, and is not a mere ministerial officer without the power of inquiring into the validity of the claims upon the lists before him, as the English revising barrister is, except in those cases where objections have been taken. When, therefore, the statute reserves to Committees their jurisdiction over all votes and claims admitted or rejected by the sheriff or judges of appeal, it in fact gives them full power of examining the validity of every vote received, and every tender proffered at the poll.

If, however, the Committee are of the same opinion as the *Linlithgowshire* were, as to their power, it is to be hoped that they will come to a different opinion as to their discretion. It is an error to say that courts of justice (and such Committees on election petitions have been since the passing of the Grenville Act) have any discretion. They must hear and determine upon all matters brought before them, in their judicial character, within their jurisdiction. Were they ever, however, allowed discretion upon such a subject, it is to be hoped they would exercise it, by investigating the rights of the class of voters now under discussion. Had an objection been made to them before the sheriff, after the decision of the Court of Review upon them, in 1832, he would have felt himself bound, by the authority of a higher tribunal, and would have rejected them, and the Court of Review would have been equally unwilling to have departed from the established precedent of their predecessors. What possible use then would there have been in serving notices of objection for the two following registrations, without a hope of succeeding upon them, and with a view only to the contingency of a contested

election. If it is necessary that objections to the same votes must be made each annual registration, as has been insisted on by the other side, the Reform Act will prove the cause of an enormous annual expense in Scotland with regard to the register, which it was one of the principal objects of all the Reform Acts to diminish. It is to be hoped, however, that the Committee will be of opinion that their jurisdiction is preserved by the terms of the 25th section of the Reform Act, and that they have full power to take into consideration the validity of a vote which has been rejected by a sheriff and admitted by a court of appeal.

Mr. Serjt. Spankie in reply.

The Committee (*u*) resolved, "That it is the opinion of the Committee that the register should not be opened."

Mr. Harrison then abandoned the case on behalf of the petitioners.

The Committee then came to the usual resolutions, "That Alexander William Chisholm, Esq. was duly elected, and ought to have been returned, and that neither the petitions, nor the opposition to them, were frivolous or vexatious."

(*u*) Previously to the Committee coming to this resolution, they, at the desire of one of their members, called in the sheriff-depute, who was examined by the Chairman as to the fact of there having been two contested elections since the registration in 1832, and previously to the election in question. From the inquiries which the reporter has however made, he is enabled to state, from the best authority, that the ground on which the great majority of the members of the Committee came to their determination was, that the voter had not been objected to at the previous registration, and not because no appeal against the judgment of the Court of Review had been made to a Committee by an election petition at either of the preceding contested elections. The latter ground, indeed, would hardly be tenable, as the party who supported Mr. Grant, and to whom the Grant Town voters were opposed, were successful at both the preceding elections, and could scarcely have been expected to petition against the return of their own candidate, which is the only mode in which they could have prosecuted such an appeal.

CASE XV.

CITY OF CANTERBURY.

The Committee was appointed on the 14th day of May, 1835, and consisted of the following Members :—

John Walter, Esq. M.P. for Berkshire.
(*Chairman.*)

Sir John Rae Reid, Bart. M.P. for Dovor.	Henry Meynell, Esq. M.P. for Lisburn.
H Franc is Baring, M.P. for Thetford.	Samuel Irton, Esq. M.P. for West Cumberland.
W. J. Egerton, Esq. M.P. for Cheshire.	Matthew Bell, Esq. M.P. for Northumberland.
Sir Edward Kerrison, Bart. M.P. for Eye.	Lord Charles James Fox Russell, M.P. for Bedfordshire.
G. L. D. Damer, Esq. M.P. for Portarlington.	Henry Cope Compton, Esq. M.P. for Hampshire.

Petitioner :—Frederick Villiers, Esq.
Sitting Member :—Right Hon. Stephen Rumbold Lushington.
Counsel for the Petitioners :—Mr. Serjeant Heath, Mr. Austin, and Mr. Cockburn.
Agent :—Mr. Parkes.
Counsel for the Sitting Member :—Mr. Harrison, Mr. Serjeant Merewether, and the Hon. John Talbot.
Agents :—Messrs. Williams, Brookes, Powell, and Broderip.

THIS case resolved itself into a scrutiny, and all the questions arose on the discipline of particular votes.

The poll books having been proved before the former Committee (*a*), no further proof of them was required

(*a*) *Ante*, p. 131.

than that they had been in the proper custody since the last petition was heard.

John Ellis's case.

The receipt of parochial relief between the 31st day of July and the period of election is a disqualification to vote.

This person had voted for the sitting member, and his vote was objected to, on the ground of having received parochial relief between the period of registration and the time of the election. The last time on which he received such relief was the 26th day of September, 1834. It was admitted by the counsel for the sitting member that the voter had received relief from time to time between the months of July 1833 and April 1834, but his vote had not been objected to before the revising barrister.

Mr. Serjeant Heath, against the vote, contended that the vote must be struck off the poll, and cited the decision of the *Bedford* Committee in *Barker's case* (*b*).

Mr. Serjeant Merewether, in support of the vote.

It was the object of the Reform Act to give some test by which the rival parties at elections might at once know whether a person coming up to tender his vote has or has not a right to do so. To obviate the difficulty which before existed in securing the fair management of an election, and for the purpose of preventing expense to the candidates, the register was introduced. The 54th sect. of that Act, after providing that the lists of voters for counties, when signed by the barrister, shall forthwith be transmitted by him to the clerk of the peace, who is to copy the same in a book, directs that "the lists of voters for such city or borough so signed as aforesaid by any such barrister shall be forthwith delivered by him to the returning officer for such city or borough, who shall safely keep the same, and shall cause the said lists to be truly and fairly copied in a book to be by him provided for that purpose, with every name therein numbered according to the directions aforesaid, and shall cause such book to be

(*b*) P. & K. 123.

completed on or before the last day of October in the present and in every succeeding year, and shall deliver such book, together with the lists, at the expiration of his office, to the person succeeding him in such office." It then emphatically declares, that "every such book to be so completed on or before the last day of October in the present year shall be deemed the register of electors to vote after the end of this present parliament, in the choice of a member or members to serve in parliament for the county, riding, parts or division of a county, city, or borough, to which such register shall relate, at any election which may take place after the said last day of October in the present year, and before the first day of November, 1833; and every such book to be so completed on or before the last day of October in the year 1833, and in every preceding year, shall be the register of electors to vote at any election which shall take place between the first day of November inclusive in the year wherein such respective register shall have been made, and the first day of November in the preceding year." The Act having so clearly and emphatically laid down the test, no decision can be more just than to tie all parties down to the register. This voter having once found his way on the register, and not having been objected to before the barrister, his title to vote is complete. I admit that if he had been objected to, his name must have been struck off the list, inasmuch as he received alms prior to the period of registration. His having received alms since that period can have no operation in depriving him of his vote for the period the present register remains in force. The only questions which he is bound to answer at the poll are the three enjoined by the 58th section, the third of which is, "Have you the same *qualification* for which your name was originally inserted in the register of voters now in force, &c.?" and if he answers this in the affirmative, the returning officer is bound to admit his vote. Perhaps some of the Committee might think

that the word *qualification* in the third question might have such a comprehensive meaning given it as to include the idea of the voter being required to deny that he has become disqualified in any other manner than that of having ceased to occupy the premises in respect of which he was placed on the register; but the illustration of the meaning of the word *qualification* in the parenthetic clause to that question confines its meaning to *house* and *land*, and clears up any doubt which might be entertained on that score. In the *Rochester case*, in the vote of *Hermitage* (*c*), this distinction was acted upon. The objection there was, that the voter, who was a registered freeman, had ceased, at the period of the election, to reside within seven miles of the place of poll, and the Committee in that case gave the word "qualification" the same meaning as I am here contending for. The same construction was put upon the word by the *New Windsor* Committee in the case of a minor (*d*), which held the vote of a person who was not objected to before the barrister was entitled to vote, although he was a minor at the time of the poll.

I admit that there may be a case put which would operate as a general disqualification—bribery, for instance—but pauperism is only a temporary disqualification. The legislature, in the 32nd and 36th sections of the Reform Act, made an alteration in the law on that point. The 32nd section enacts, that "every person who would have been entitled to vote in the election of a member or members to serve in any future parliament for any city or borough not included in the schedule marked A., to this Act annexed, either as a burgess or freeman, or in the City of London as a freeman and liveryman, if this Act had not been passed, shall be entitled to vote in such election, provided such person shall be duly registered according to the provision hereinafter continued, but that no such person shall be so regis-

(*c*) *Ante*, p. 83. (*d*) *Ante*, p. 160.

tered in any year unless he shall on the last day of July in such year be qualified in such manner as would entitle him to vote if such day were the day of election and this Act had not been passed, nor unless, where he shall be a burgess or freeman, or freeman and liveryman of any city or borough, he shall have resided for six calendar months next previous to the last day of July in such year, within such city or borough, or within seven statute miles from the place where the poll for such city or borough shall heretofore have been taken." The 36th section then provides, that "no person shall be entitled to be registered in any year as a voter in the election of a member or members to serve in any future parliament for any city or borough, who shall within twelve calendar months *next previous to the last day of July* in such year have received parochial relief or other alms, which by the law of parliament now disqualify from voting in the election of members to serve in parliament." These two sections have totally altered the law on this subject, and have made the receipt of alms within the twelve months preceding the registration a disqualification in substitution of that formerly occasioned by the receipt of alms within twelve months preceding the election. Such being the evident intention of the legislature to regard the fact of undisputed registration as carrying the right to vote, it would be a monstrous hardship if the Committee were to put such a construction upon the statute as to extend the period of disqualification over a space of two years instead of one. At the next registration the voter is, of course, disqualified; but why, when there are no words in the Act to justify such a proceeding, disfranchise him now? The Committee should not argue from expediency in this case, but should govern themselves by the words of the statute itself in construing its meaning. It is true, the voter might have been prevented from being placed upon the register. Why was not this

done? The means of ascertaining the names of those persons in the city who had received parochial relief prior to the last day of July were open to every one, were within the reach of all parties, and if the petitioners' party had used proper diligence they might have had this voter's name struck from the register. Not having been objected to before the barrister, his vote is good. The receipt of alms after the register can have no operation until next year; and on no other principle could the register be worked. There are no words in the Act which declare that receipt of alms after the registration is to take away the right to vote; and it is a principle which Committees always act upon, that no vote is to be taken away except by express words; and if the legislature had intended that subsequent relief was to be held a disqualification, words to that effect would have been introduced.

The Committee decided that the vote was bad, and ought to be struck off the poll.

Samuel Newington's case.

Payment to a voter's wife by the parish, if the parties agree to treat it as a debt, is not a disqualification.

In this case the voter polled for the sitting member, and his vote was objected to on the ground of having received alms between the registration and the election.

It was proved that the voter had run away from his wife about the beginning of August, 1834, and that the parish had given her relief for about two months; the last occasion was on the 3rd of October. About that period the voter returned, and agreed with the parish that if they would take his wife into the poor-house he would pay them two shillings a-week for her maintenance. She was accordingly admitted into the workhouse, and remained there some time, when the voter wrote to the guardian of the poor the following note:—

"Mr. Miller,—Sir,

"In consequence of having two children to look after, I find it impossible for me to do for them as I ought to do, and I cannot afford to pay a person to look after

them, and I shall still keep getting in debt with you; therefore, I think my wife had better come out of the house, and we must do as well as we can, and I trust that she will do better for her children than any one else. At the same time I hope I shall not be burdensome to you any more, and will pay you as soon as I can.—I am, Sir, yours obediently,

"S. NEWINGTON."

In consequence of this letter, his wife left the workhouse; the voter, however, never paid the parish any part of the money they had expended on account of his wife. No objection had been made to him before the revising barrister.

Mr. Harrison, for the vote, contended, that the voter could not be considered as having received parochial relief. He clearly meant to repay the money which had been expended on his wife's account, and the note gave abundant evidence that such was the understanding both of the voter and the parish.

Mr. Cockburn against the vote.

The payment of alms to a man's wife is payment to himself, and operates as a disqualification as much as if paid into his own hand. The principle has been already decided by the Committee in the *Bedford case* (*e*). There the children of a voter had been employed by the parish at a lower rate of wages than the ordinary scale, and it was held that the receipt of alms by the children was the receipt of the father, and the vote was consequently determined to be bad.

Thomas Bligh's case.

Committee precluded from entering into the discussion, on the ground of parochial relief, of any vote

In this case the voter had polled for the sitting member. His vote was objected to on account of having received parochial relief after the period of registration. It was proved that the voter had repeatedly received alms, both before and after the 31st day of July,

(*e*) P. & K. 130.

which was not objected to before the revising barrister.

previous to the election; but no objection was made to his name being on the register before the revising barrister.

Mr. Serjt. Heath was heard against the vote, and urged similar arguments to those he had used in *Ellis's case.* (*f*)

After this the Committee called in the town clerk, who proved that no objection had been made to the voter remaining on the register; when the Chairman suggested that they were precluded, by the 60th section of the Reform Act, from going into the case.

The room having been cleared, the Committee decided that the vote was good; and they also passed the following resolution:—

"That this Committee are of opinion that they are restricted by the Reform Act from entering into the consideration of the validity of any vote which is on the register, and has not been questioned before the revising barrister."

Thomas Eastman's case.

Committee will not consider the validity of a vote on the ground of parochial relief, unless objected to before the revising barrister; nor inquire into any case where it is objected that parochial relief was given after the 31st of July.

The voter had polled for the sitting member, and the objection to his vote was similar to that in the former cases.

The Committee, on being requested by Mr. Serjt. Heath to inform the counsel for the petitioner how far they meant their resolution in *Bligh's case* to extend, substituted, in lieu of their resolution in *Bligh's case*, that they would not take into consideration any case where the objection was on account of having received parochial relief, unless the objection was made before the revising barrister, nor inquire into any vote whatever on account of relief given after the 31st day of July; and they accordingly declared that Eastman's vote was good.

Mistake in naming a voter on the

Stephen Brown's case and John Theobald's case.

The voters had tendered their votes for the petitioner,

(*f*) *Ante*, p. 316.

but were rejected because their names on the register were spelt respectively "Browne" and "Theobald." The identity of the voters, and their coming up to poll, and tendering their votes, having been proved, their votes were admitted without discussion.

register no disqualification.

Edward Munn's case.

In this case the voter had tendered his vote for the petitioner, but was rejected because he had changed his residence.

Unless the three questions enjoined by the 58th section of the Reform Act are put to the voter at the poll, his vote cannot be rejected.

It was proved, that although he had changed his residence, he still continued in the occupation of his former house, and no proof was given of the three questions enjoined by the 58th section of the Reform Act having been put to the voter at the poll.

Mr. Cockburn in support of the vote.

There is no evidence here that the three questions enjoined by the 50th section of the Reform Act had been put, and that being the case, it follows that the Committee are not, in the absence of all evidence of the fact, to presume that the questions were put by the returning officer. The vote being once on the poll, nothing is to be presumed adversely to it. The only questions authorized by the Act are three, viz.:

"Are you the same person whose name appears as A. B. on the register now in force, &c.?"

"Have you already voted, either here or elsewhere, at this election, &c?"

"Have you the same qualification for which your name was originally inserted in the register of votes now in force, &c.?"

And the schedule then goes on to say, "*specifying in each case* the particulars of the qualifications described in the register."

These three are the only questions which the returning officer is authorized to put, and in no form of answer, which the voter might give to them, could any change of residence have been elicited. There being, however, no proof of their having been put, and it be-

ing in proof that the voter continued to occupy the premises, in respect of which he was registered, the vote must be placed upon the poll.

Hon. John Talbot against the vote.

Although, if the voter had been upon the poll, the presumption would have been in favour of the vote, yet in the case of a tender the presumption is the other way. The Committee must take for granted that the returning officer did his duty in rejecting the vote, and on no other ground than on the voter's answering the third question in the negative could the returning officer, with propriety, reject the vote. It consequently follows that the voter having changed his residence, and having been rejected at the poll, that the Committee must come to the conclusion that he was properly rejected, and his claim must therefore be disallowed.

The Committee decided that the vote was good, and ought to have been put on the poll.

The petitioner having obtained a majority over the sitting member, the sitting member then proceeded to strike votes off the petitioner's poll.

John Pringuer's case.

The principle of Bligh's case extended to cases where the voter's residence was too distant.

The voter in this case, who had tendered his vote for the sitting member, was registered as a freeman, and the place of his residence was described in the register as "Selling," a village more than seven miles from the place of poll. No objection had been made to his vote before the revising barrister. His vote was objected to, on the ground of his residence being too distant from the place of poll, and he was accordingly placed on the list of tendered votes.

Mr. Talbot, for the vote, having given evidence in support of the identity of the voter, &c., Mr. Austin, for the petitioner, asked the Committee whether the principle of their resolution in Bligh's case applied to this and similar cases; and receiving an answer in the affirmative, he then proceeded to comment on the evidence

adduced in support of the identity of the voter, and having been heard, the Committee decided that the vote was good, and ought to have been placed upon the poll.

Stedwick's and Kirkby's cases.

These voters were respectively registered, "Thomas Stedwick" and "Henry Kirkby;" their respective names being Thomas Aldersey Stedwick and Henry Healey Kirkby. They had respectively tendered their votes for the sitting member, and were rejected at the poll on account of the alleged variance of their names from those in the register. 20th of May. Mistakes in names no disqualification.

The identity of the voters having been proved, their votes were admitted without any discussion.

Robert Barker's case.

In this case the voter who had polled for the sitting member was objected to, on the ground that he had changed his residence between the period of registration and the election. If the three questions are not put at the poll, vote cannot be objected to.

In the course of the investigation it appeared that the voter had changed his residence, but that none of the three questions authorized by the 58th section of the Reform Act had been put; on which Mr. Serjt. Merewether objected to the case being further proceeded in.

Mr. Serjt. Heath against the objection.

In this case the voter having changed his residence is not entitled to be retained on the poll; and the circumstance of the questions not having been put to him at the poll does not alter the case. The very point was decided by the Committee who sat on the *Southampton case* in *Sherry's* vote (*g*). In that case the voter had changed his residence between the registration and the election, and none of the questions were put. From the decision of the Committee in that case, it is manifest that, if the evidence had amounted to proof of change of residence, they did not consider the putting of the

(*g*) P. & K. 234 (*b*).

questions material, and that they would have struck off the vote, notwithstanding that had not been done.

Mr. Serjt. Merewether and Mr. Talbot in support of the objection.

The returning officer is only entitled to ask three questions of any voter who comes up to poll, and none other; and he can only refuse the voter "on its appearing on his putting such questions" that he has not the qualification in respect of which he was registered. There having been then no objection made to his polling, no question can arise relative to the vote. The case is analogous to those which came before the revising barrister. Over those votes which are objected to before the barrister, the Committee have jurisdiction; over those which are not, they have none. So in this case, had the agents for the petitioners required the questions to be put, the vote might have been then rejected, as the returning officer has power to adjudicate; but as they did not choose so to do, it is too late to make any objection to the vote now.

The Committee resolved that,

No inquiry having been made, either by the returning officer or his deputy, by putting the questions at the poll, the Committee did not conceive themselves at liberty to investigate the validity of the vote. The vote was accordingly decided to be good.

Jacob Jacob's case.

The three questions must be put in the very words of the Act.

In this case the voter had tendered for the petitioner, and his vote was refused on the ground of change of residence; but it appeared that the sheriff merely asked him whether he had not changed his residence, and did not put the third question in the 58th section of the Act *totidem verbis*.

Mr. Serjt. Heath, for the vote, relied on the decision of the Committee in the preceding case.

Mr. Serjt. Merewether against the vote.

The voter not being upon the poll, it is incumbent

upon him to prove his qualification, the third question in this case having been put to him by the sheriff in a sufficiently pointed manner to satisfy the intention of the legislature. The preceding case is widely different from this. There no objection to the voter was made by any one. Here the agent of the sitting member called upon the sheriff to put the questions, and this having been done, inasmuch as putting them *in totidem verbis* is a mere form, the voter was properly rejected.

The Committee admitted the vote, on the ground that the question was not put in the exact words of the Act.

William Billyeard's case.

In this case the voter had tendered for the petitioner, but his vote was rejected, because he was registered as "William Benjamin Myeald."

Mistake in spelling no disqualification, although not *idem sonans*.

It having been proved that the voter was the person whom it was intended to register under the name of "Myeald," and that he tendered his vote for the petitioner, his vote was admitted without discussion.

Abraham James's case.

In this case the voter had tendered his vote for the petitioner, but was rejected on the ground of change of residence. It appeared, however, that the questions enjoined by the 58th section were not put to him, and his vote was accordingly admitted without opposition.

Vote cannot be referred at the poll, unless the parliamentary questions are put.

William Gilbert's case.

In this case the voter had tendered for the sitting member, and his vote was rejected on the same grounds as in the preceding case, but the questions were not put to him on his rejection, on which, after a discussion as to the facts of the questions having been put (which was very warmly contested), the vote was admitted.

Radcliff's case.

In this case the voter had tendered his vote for the sitting member, but had been rejected on the ground of

Vote actually on the poll cannot

be objected to as a tendered vote.

the name on the register being "Radcliffe." This circumstance was brought before the former Committee (*h*) who directed his name to be placed on the poll, which was accordingly done. The objection made to the vote in the present instance was, that the voter *tendered* his vote at the wrong booth.

On the case being opened, Mr. Harrison, for the sitting member, objected to the Committee going into it, inasmuch as the vote was actually on the poll, and, consequently, could not be objected to as a tendered vote.

Mr. Cockburn against the objection.

The objection was not as having polled at the wrong booth, because the man never did actually poll, but as having tendered his vote at the wrong booth; and the objection was framed according to the circumstances of the case; and the vote having been afterwards put upon the poll, on the ground of misnomer, cannot make any difference.

The Committee considered the vote not as a tendered vote, but as one actually on the poll; and that it could not be objected to as a tendered vote.

James Smithson's case.

22 Geo. III. c. 41; repealed by 7th & 8th Geo. IV. c. 53, so far as regards excisemen.

In this case the voter had polled for the sitting member. The objection to his vote was, that he had been employed in the excise within twelve months previous to the election. It appeared that the voter had been temporarily employed by the commissioners of excise, during the summer preceding the election, in the collection of the hop duty; his appointment being made on the 30th of July, but his engagement ceased in the month of October following, a period of more than two months before the election.

Mr. Cockburn against the vote.

This is an objection which could not have been taken

(*h*) *Ante*, p. 131.

before the 31st of July, consequently it is perfectly competent to the Committee to entertain the case.

By the 22 Geo. III. c. 41, it is enacted, among other things, "that no commissioner, collector, supervisor, gauger, or other officer or person whatsoever, concerned or employed in the charging, collecting, levying or managing the duties of excise, or any branch or part thereof, shall be capable of giving his vote for the election of any knight of the shire, commissioner, citizen, burgess, or baron, to serve in parliament." And if any person, hereby made incapable of voting as aforesaid, shall nevertheless presume to give his vote, during the time he shall hold, or within twelve calendar months after he shall cease to hold, or execute any of the offices aforesaid, contrary to the true intent and meaning of this Act, such votes so given shall be "null and void to all intents and purposes whatsoever." The Act then provides that every person so offending shall forfeit £500. It is therefore clear that the voter comes within the prohibitions of this Act. The question therefore will be, whether this Act is repealed by the 7th & 8th Geo. IV. c. 53, and I think the Committee will be of opinion that it is not. The 9th section of the latter statute enacts, "that no commissioner or assistant commissioner of excise, or commissioner of appeal, under this Act, or any officer of excise or person employed in the charging, collecting, or managing of any part of the revenue of excise, or in comptrolling or auditing the accounts thereof, shall be capable of giving his vote for the election of any person to serve in parliament; and if any commissioner, or assistant commissioner, or commissioner of appeal, or any officer or other person hereby made incapable of voting as aforesaid, shall nevertheless presume to give his vote during the time he shall hold, or within two calendar months next after he shall have ceased to hold or execute any office or employment as aforesaid, such vote so given shall be held null and void to all intents and purposes what-

soever; and every such commissioner, assistant commissioner, commissioner of appeal, officer, and person as aforesaid, who shall give any such vote, or who shall, by word, message, or writing, or in any other manner whatsoever, endeavour to persuade any elector to give, or to dissuade any elector from giving his vote for the election of any person to serve in parliament, "shall for every such offence forfeit and lose the sum of £500." Now, had the statute stopped here, it is clear that the difference of time is applicable to the penalty only; but, to obviate all doubt on the subject, the proviso at the end of the clause expressly declares "that nothing herein contained shall extend or be deemed or construed to extend, to repeal or alter any of the laws touching or in anywise relating to election in any part of the United Kingdom, excepting so far as is hereby expressly provided." Now, it is impossible to contend here that the 22 Geo. III. is expressly repealed by this consolidating Act. A statute must be repealed either expressly or by implication. Here there are neither express words, nor is there any implication to that effect.

The 127th section of the consolidating Act says, that "all laws, powers, authorities, rules, regulations, restrictions, exceptions, provisions, clauses, matters, and things provided for and contained in any Act or Acts of Parliament in force at and immediately before the commencement of this Act relating to the revenue of excise in any part of the United Kingdom, or to any matter or thing expressly provided for by this Act, which are repugnant to or inconsistent with the several matters, clauses, provisions, and regulations of this Act, or any of them, shall be, and the same are hereby respectively repealed, and shall no longer be put in force or observed in any part of the United Kingdom, save and except so far as the same repeal or repeals any former Act or Acts, or any part or parts of any former Act or Acts of Parliament. The great dread of the legislature has always

been the improper increase of the influence of the crown, and it must be an absurdity to suppose that it was intended to repeal so important a statute (the great safeguard from undue influence) by implication, unless where inconsistent. Here the one Act is perfectly consistent with the other, the former laying down the time within which a person must have ceased to hold office before he could vote, the latter limiting his liability to the penalty, in case he did vote within two months instead of twelve. The appointment being temporary, if it should have any weight, would make the case stronger against the vote; however, we have nothing to do but with the words of the Act.

Mr. Talbot for the vote.

Does this new Act repeal the old one, or not? If it is inconsistent with the old one, it does. Is it inconsistent? Yes. It is expressly provided otherwise, and therefore repealed. The preamble of the new Act states it to be "an Act to consolidate and amend the laws relating to the collection and management of the revenue of excise throughout Great Britain and Ireland." The former Act relates to the customs, excise, &c. The 9th clause of the new Act expressly limits the time within which a person who has ceased to hold office under the excise to two months, and the 127th declares that all former regulations inconsistent with the Act are repealed. The new Act, substituting two months instead of twelve, is clearly inconsistent with the old Act, and must therefore be considered as repealing it.

The Committee decided that the vote was good.

The petitioner then abandoned the case, and the Committee in the usual manner resolved that the Right Hon. Stephen Rumbold Lushington was duly elected, and that neither the petition nor the opposition to it were frivolous or vexatious.

CASE XVI.

BOROUGH OF IPSWICH.

The Committee was appointed on the 26th day of March, 1835, and consisted of the following Gentlemen:—

Patrick Maxwell Stewart, Esq. M.P. for Lancaster Borough, (*Chairman.*)

Walter Frederick Campbell, Esq. M.P. for Argyleshire.
Henry Burton, Esq. M.P. for Beverley.
Wm. Hughes Hughes, Esq. M.P. for Oxford.
John Ryle, Esq. M.P. for Macclesfield.
Christopher Fitzsimon, Esq. M.P. for King's County.
William Seymour Blackstone, Esq. M.P. for Wallingford.
J. Port, Esq. M.P. for Clitheroe.
John Gully, Esq. M.P. for Pontefract.
Montague Lowther Chapman, Esq. M.P. for Westmeath.
John Pemberton Plumptre, Esq. M.P. for East Kent.

Petitioners:—Electors.
Sitting Members:—Robert Adam Dundas and Fitzroy Kelly, Esqrs.
Counsel for the Petitioners:—Mr. Hill and Mr. Austin.
Agent:—Mr. Henry Young.
Counsel for the Returning Officer:—Mr. Serjeant Merewether and Mr. Wordsworth.
Agents:—Messrs. Brutton and Clipperton.
Counsel for the Sitting Members:—Mr. Harrison, Mr. Pollock, Mr. C. Phillips, Mr. O'Malley.
Agents for the Sitting Members:—Messrs. Brutton and Clipperton.

THE petition, which was by electors, after stating the election, and that the sitting members, and James Mor-

rison and Rigby Wason, Esqrs., were candidates at such election, and that the bailiffs were the returning officers, and that Mr. Cobbold and Mr. Bristo were such bailiffs and returning officers, contained charges:

1st, That of the voters for the sitting members, divers were not duly registered as electors to vote at the said election.

2ndly, That of such voters, divers had not, at the time they so voted, the same qualifications for which their names had been originally inserted in the register of voters then in force for the borough.

3rdly, That divers persons, "who were registered as electors for the said borough, became disqualified to vote as electors at such election subsequently to the period of the list of electors being revised and signed for the purpose of such registry, and previously to their so voting by their receiving alms as parish relief, or by not residing within the said borough or within seven miles thereof, or by other legal or personal disqualifications and incapacities; and that they and divers other persons, who had no legal right to vote, were nevertheless admitted to vote, and did vote for the sitting members."

4thly, That divers persons were admitted to vote and did vote for the sitting members, "who were disabled or disqualified from or incapable of voting at the said election, by reason of their being or having been within twelve months previously to such election concerned or employed in the charging, collecting, levying, and managing duties of excise, customs, or other duties or revenues, or some other office or employment."

5thly, That divers persons were admitted to vote, &c. "who were or had been either during such election or within six calendar months previous to such election, or within fourteen days after it was completed, employed at such election as counsel, agent, attorney, poll-clerk, flagman, or in some other capacity, for the purposes of

the said election, and had, either before or after such election, accepted or taken from the said candidates, or some or one of them, or from some other person, for or in consideration of or with reference to such employment, a sum or sums of money, or a retainer, fee, office, place, or employment, or a promise or security for a sum or sums of money, or a retaining fee, office, place, or employment."

6thly, That divers persons were admitted, &c. "who had asked, received, and taken money or other reward by way of gift, loan, or other devise, or had agreed or contracted for money, gift, office, employment, or other reward, to give their votes for the said R. A. Dundas and F. Kelly, or one of them, or to forbear to give their votes to the said J. Morrison and R. Wason, or either of them."

7thly, That divers persons were admitted, &c., "who by themselves or persons employed by them, did by gifts or rewards, or by promises, agreements or securities for gifts or rewards, corrupt or procure, or attempt to corrupt or procure, persons to give their votes for the said R. A. Dundas and F. Kelly, or one of them, or to forbear to give their votes to the said J. Morrison and R. Wason, or either of them."

8thly, That all such persons "who were so admitted to vote and did vote as therein aforesaid, and divers other persons who voted at the said election for the said R. A. Dundas and F. Kelly, or one of them, were disabled or disqualified from voting, or incapable or unqualified, or incompetent to vote at the said election."

9thly, "That divers persons who were duly registered as electors at the said election, and who were entitled to vote at such election, claimed to vote thereat for the said J. Morrison and R. Wason, or one of them, at the proper polling places, and they were illegally and improperly excluded from voting by the said returning officers."

10thly, That Mr. Bristo, one of the returning officers, after receiving the writ for the election, and previously to and during such election, and particularly in respect to taking the poll, was guilty of great and undue partiality in favour of the sitting members, and, as well before as after the receipt of the writ, had canvassed many of the electors in company with and on behalf of the sitting members, and solicited and prevailed upon electors to vote in their favour, or to forbear voting for Mr. Morrison and Mr. Wason, and had otherwise interfered with the freedom of election.

11thly, That the returning officers rejected as false and illegal divers votes which were tendered at the said election for the sitting members, and for Mr. Morrison and Mr. Wason, or some or one of them, and that Mr. Bristo finding at the close of the poll that more votes had been so tendered for the sitting members than for Mr. Morrison and Mr. Wason, "did admit and place such votes upon or add such votes to, or cause the same to be placed upon or added to the poll after the close of such poll, or after the legal and proper time for closing the same had expired, and did also improperly and illegally insert or cause to be inserted upon the said poll, without the concurrence or contrary to the desire of the said J. C. Cobbold, several votes which ought not to have been inserted therein, and did otherwise illegally and improperly alter the said poll; and that the said returning officers did, in casting up the votes on the said poll, knowingly and wilfully reckon many votes so illegally and improperly placed on the poll, and did not declare the true and real state of the poll as it stood at the final close thereof."

12thly, That after the place in parliament to be supplied by such election became vacant, and as well before as after the teste or issuing out of the writ for the said election, and at and during the said election, the said R. A. Dundas and F. Kelly did by themselves and by their agents, friends, and partisans, by divers ways

and means, at their and each or one of their charge and behalf, directly and indirectly, give, present, and allow to persons having votes at such election, money, meat, drink, lodging, entertainment, provision, and reward, and did make presents, gifts, rewards and promises, agreements and obligations, and engagements to give money, meat, drink, provision, present, reward and entertainment, to and for persons having votes as aforesaid, and to and for the use, advantage, benefit, employment, profit, and preferment of such persons, in order that they the said R. A. Dundas and F. Kelly might be elected to serve in parliament for the said borough.

13thly, That before and at and during the said election the said R. A. Dundas and F. Kelly were or was, by themselves and by their agents, guilty of divers acts of bribery and corruption, in order to corrupt and procure, and did by themselves and by their agents, friends, and managers, and other persons employed in their behalf, by gifts, presents, money, rewards, and promises and agreements, and securities for money, gifts, and rewards, and by threats, intimidations, promises, undue influence, and other corrupt, illegal, or improper practices, acts, and means, corrupt and procure divers persons having or claiming to have votes at such election, to give their votes in favour of the said R. A. Dundas and F. Kelly, and to forbear to give them in favour of the said J. Morrison and R. Wason.

14thly, That the sitting members, by the said corrupt and illegal practices, were disabled, incapacitated, and ineligible to serve in parliament for the borough of Ipswich; that their return was null and void, and that the said returning officers had notice of and were informed and well knew of such corrupt and illegal conduct and practices, which were also well known to the electors, and notorious in the said borough.

15thly, That by the ways and means aforesaid the sitting members obtained a colourable majority of votes

over Mr. Morrison and Mr. Wason, and procured themselves to be returned, whereas Mr. Morrison and Mr. Wason had a legal majority, and were duly elected and ought to have been returned.

The prayer of the petition was, that the House would declare the election and return of the sitting members null and void, and that Mr. Morrison and Mr. Wason might be declared duly elected to serve in parliament for the said borough.

Proof of the Poll.

The two bailiffs are the returning officers of Ipswich. One of them, Mr. Cobbold, was called to prove the poll. He deposed that he received the poll-books in the evening of each of the two polling days, and kept them after the last day of polling until the declaration of the numbers on the conclusion of the election, (which was on the 9th of January, 1835,) and that he then delivered them to the town-clerk; that he again received them from the other returning officer on the 12th of February, 1835, and had kept them ever since, except for two periods, during the first of which he had delivered them to one of the poll-clerks, who was also clerk in the town clerk's office, for the purpose of making a copy of them for the use of the petitioners, and during the second of which he had delivered them to the same poll-clerk for the purpose of making a copy of them for the use of the sitting members; that he had looked through them since he had last received them, and had no doubt that no alteration had been made in them, although he could not swear it.

Mr. Harrison objected to the reception of the poll-books, because they had not been in the custody of the witness during the whole time since the conclusion of the poll, and no account was given of their having been properly taken care of by the persons in whose hands they had been in the meanwhile. In the *Bedford*

case (*a*) the poll-books had been delivered over to the town-clerk in a similar way to the present; the town-clerk was therefore considered the proper person to prove their due custody, and on his evidence the Committee received them. So fully indeed was the principle that the sole custody of the books delivered over by a returning officer to a third person must be proved by the evidence of that third person recognized by the *Second Montgomery case* (*b*), that the Committee not only refused to receive the books because the town-clerk was not called who had had the care of them from the close of the election till he delivered them back to the returning officer for the purpose of producing them, but they refused to adjourn for the purpose of allowing the petitioners to bring up the town-clerk from Wales; the effect of which latter decision was, to oblige the petitioners to abandon their case.

The Committee then called upon the witness to explain several alterations and erasures which appeared on the face of the poll-books, some of which he did, and others he declared his inability to do, because the poll was taken in the presence of the other returning officer. The Committee then desired that the town-clerk should be examined by themselves alone, independently of counsel.

The town-clerk deposed that he received them from the returning officers on the day of the declaration of the numbers; that they were afterwards delivered from his office, whilst he was absent, to Mr. Bristo, (the returning officer, who had been examined;) that he received them again after they had been in Cobbold's possession for the purpose of making copies for the petitioners and sitting members; and that during the time they were in his care his clerks only had access to them, and he believed one of his clerks locked them up in a drawer in the office, but he did not know.

(*a*) P. & K. 116. (*b*) P. & K. 467.

The Committee, upon this evidence, informed the counsel "that they were quite satisfied as to the authenticity of the books."

Mr. Wordsworth then proposed to cross-examine the returning officer who had produced the poll, as to the conduct of the election. Whenever a witness has been sworn and given any evidence in a suit, however formal it may have been, the counsel on the opposite side have the right to cross-examine him, although he may substantially be the real party in the suit; *Phillips on Evidence*, vol. i. c. 8, p. 273. Thus in an action against the sheriff for permitting the escape of a debtor in his charge, Lord Tenterden permitted the bailiff who was called by the plaintiffs to produce the warrant to be cross-examined on the part of the defence, although the bailiff, and not the sheriff, was the real party against whom the action was brought; *Morgan* v. *Bridges* (*c*). The mere fact of a witness being sworn, although he is asked no questions, and only produces a document, was held by the same learned judge to entitle the counsel on the other side to cross-examine him; *Rex* v. *Brooks* (*d*). The same rule has been adopted in Committees; and in the *Coventry case* (*e*), the sheriff, whose conduct has been impugned in the petition, was permitted to be examined by the counsel for the defence in his own vindication, upon his being brought forwards to prove the poll on the part of the petitioners. In the *Worcester case* (*f*), a mayor, against whom a charge had been made in a petition, was allowed to be called and examined in order to disprove it.

Mr. Hill contended that in no case at law had a person who was a party to a cause been allowed to be called and examined by his own counsel. In the *Worcester* and *Coventry cases*, although the conduct of the

(*c*) 2 Starkie, N. P. C. 314.
(*d*) 2 Starkie, N. P. C. 73.
(*e*) P. & K. 352.
(*f*) 3 Doug. 275.

returning officers was attacked, yet it was only done for the purpose of affecting the election of the sitting members, and those returning officers had not made themselves parties to the petition, as the present had done, by appearing by their counsel. Their evidence, therefore, as disproving the alleged misconduct in those cases, was perfectly admissible on the part of the sitting member; but who before this case ever heard of a counsel proposing to examine his own client in his own favour?

The Committee resolved "that they cannot allow the cross-examination of the returning officer in this stage of the business, such returning officer having been called by the petitioners simply to establish the authenticity of the poll-books, which has been done."

Mr. Serjeant Merewether begged that the counsel on the other side would inform him whether they meant to produce evidence against the returning officers; and suggested, that if that were the case, in order that expense and time might be saved to the returning officers, that evidence should be gone into in the first instance.

Mr. Hill stated that he could not concede to the suggestion which had been made.

Mr. Serjeant Merewether begged that the Committee would ask the question of Mr. Cobbold respecting the allegation in the petition against Mr. Bristo, that he, finding at the close of the poll that more votes had been tendered for two of the candidates than for the other two, admitted votes that were tendered.

The counsel were informed that the Committee were of opinion that they could not now put the question suggested.

Mr. Hill stated, that before he examined any witness relative to the conduct of the returning officers, he would undertake to give notice to the counsel for the returning officers, who accordingly withdrew.

The first charge entered into by the petitioners was

that of bribery, in the course of which the following cases of agency were argued:—

Cases of Agency.—Hart's case.

A witness (Henry Hart) deposed that one of the sitting members, Mr. Dundas, with several other gentlemen, came into a ship-builder's yard and entered into conversation with a voter named Brown, and that this conversation was commenced by a question from one of these gentlemen to Brown, but the witness could not say whether Mr. Dundas heard the question. He was then asked, "what was the question put to Brown?"

Evidence cannot be given of what is said to a voter out of a candidate's hearing by a person accompanying that candidate on his canvass, but can be of what is said by such a person in the candidate's hearing.

Mr. Harrison objected to the question, on the ground that the conversation between the voter and a third person, not shown to be the agent of the sitting members, could not be evidence against them, at any rate, unless Mr. Dundas heard it.

Mr. Austin contended that evidence of the conversation was admissible, first, because Mr. Dundas and the gentleman who put the question having come to the yard for the common specific purpose of canvassing the voter, Mr. Dundas was responsible for what that gentleman said; and, secondly, because from the local situations of Mr. Dundas and the voter, which the witness had previously described, it was impossible but that Mr. Dundas must have heard it.

Mr. Harrison, in reply, contended that it would be a most dangerous course to hold a candidate responsible for every thing which might be said out of his hearing by any one who chose to join him in his canvass.

The Committee were of opinion that "the question could not be at present put" (*g*).

The witness having subsequently stated that he had no doubt but that Mr. Dundas heard the conversation, the question was allowed to be put.

(*g*) See *Norwich case*, P. & K. 570.

In order to prove agency, evidence may be given of the existence of a Committee, although the connection of that Committee with the sitting member has not been previously proved.

Evidence was given that a room, No. 10, at the White Horse Inn, was frequented by various members of the Blue party, (which was the party that supported the sitting members;) that there were pens, ink, and paper constantly there; that the word "Private" was written on the door; that some of the town servants were placed at it to prevent improper persons from entering; and that the room was commonly called the Blue committee-room. A witness was then called, who stated that he was employed by the Blue party during the election, and attended at the bottom of the stairs of a committee-room at the Golden Lion.

Mr. Pollock then objected to the further examination of this witness until the connection of the committee at the Golden Lion with the sitting members was established. Agency must be proved according to the well-established doctrine on that subject, before the acts or declarations of the supposed agents could be given in evidence; for it would be unfair that sitting members should be made responsible for acts in which they had taken no part. It would indeed be not only a waste of the time of the Committee, but contrary to justice, were evidence of this kind admitted *de bene esse*, as it might prejudice the sitting members, even though no authority or sanction on their part should be brought home to them. He referred to the following authorities in support of these positions, *Phillips on Evidence*, vol. i. p. 197, *Newry case* (*h*), *Oxford case* (*i*), *Galway County case* (*k*), *Warwick case* (*l*), *Norwich case* (*m*), *Bristol case* (*n*), *Ennis case* (*o*), and *Pontefract case of* 1827 (*p*).

Mr. Hill, in support of the reception of the evidence, contended that he only endeavoured to prove the same facts with regard to the committee at the Golden Lion

(*h*) P. & K. 149, and notes pp. 158 to 161.
(*i*) P. & K. 60.
(*k*) P. & K. 517.
(*l*) P. & K. 538.
(*m*) P. & K. 564
(*n*) P. & K. 514.
(*o*) P. & K. 528.
(*p*) P. & K. 160, in notis.

as had been already proved with regard to the committee at the White Horse. Agency must be proved by a variety of circumstances; one of these was the being the member of a committee, and that it was in order to establish that circumstance, that evidence of the existence and composition of these committees was then proposed to be given. The Committee determined that Mr. Hill might proceed with the examination.

Cooke's case.

Acts sufficient to establish a *primâ facie* case of agency.

The next case of agency was that of a chemist and druggist, named Arthur Bott Cooke. It was proved that he was constantly in the habit of attending at the rooms called Committee-rooms, at the White Horse and Golden Lion, (which latter was only used during the polling days, from its vicinity to the hustings;) that he had been seen canvassing with one of the sitting members; that he had carried addresses by the sitting members to the Suffolk Chronicle to be printed, and had ordered a Chronicle from the office to be sent to Mr. Kelly, in London; and that the bills for the insertion of those addresses had been sent into the White Horse, and paid by the person with whom Mr. Kelly lodged. It was also proved that Mr. Kelly had referred the captain of a vessel, who had come from London to vote for the sitting members, to Cooke for the payment of his travelling expenses, and that Cooke had paid him them.

On a question being asked after this evidence as to one of the acts of Cooke, a discussion arose as to whether his agency to the sitting members had been sufficiently established.

Mr. Pollock, in objection to the question.

The mere circumstance of canvassing with the sitting members has been expressly decided in the *Mitchell case* (*q*) not to constitute agency. He being a member of a committee would not render any one an agent; nor

(*q*) 1 Lud. 89.

indeed, according to the recent decision in the *Oxford case* (*r*), could evidence be given of what was done in the committee-room, unless previous proof had been given of the agency of the parties doing it. In the present case, there was not even any proof of the existence of a committee at all, for the evidence only showed that certain persons were in the habit, during the election, of meeting at the same rooms. The fact of Mr. Cooke's having been employed to carry an advertisement to a newspaper office would possibly constitute him an agent for that particular purpose, but it would no more render him a general agent for the sitting members, during their election, than it would have done any porter or messenger who might have been casually hired to perform the same errand. A similar answer might be given to the argument of general agency which had been drawn from the circumstance of Mr. Cooke having been referred to by Mr. Kelly, as the person who would pay a voter's expenses. This very act of particular agency had been determined by the *Durham* (*s*) Committee in *Brand's case*, not to constitute sufficient evidence of general agency. No proposition is better established at common law than the distinction between a general agent and a particular agent with a limited authority for a special purpose; *Fenn* v. *Harrison* (*t*), *Drake* v. *Sykes* (*u*); and the same doctrine has been constantly followed in Committees of the House of Commons. It would be impossible indeed for any member to consider his seat safe, however correct he or his acknowledged agents might have been in their conduct during an election, if he was to be held responsible for the acts of every individual he might have occasion to employ for any purpose, however unimportant, during the continuance of it.

Mr. Hill in support of the question.

(*r*) P. & K. 60.
(*s*) 2 Peck. 185.
(*t*) 3 T. R. 757.
(*u*) 7 T. R. 113.

The merely being a member of a candidate's committee has been held at common law sufficient to constitute a person a member of that committee; *Ridler* v. *Moore* (*x*). Admitting, however, that Committees of the House of Commons have required stricter proof of agency than may have been held necessary in a Court of Justice, is there any case where a person who has acted as the agent of a candidate in so many particular instances as Mr. Cooke has in the present one, not been held to have been proved an agent? It will be of course in the power of the other side to call evidence to rebut our *primâ facie* case, if they are able to do so. All we contend for is, that sufficient evidence has been laid before the Committee of the agency of Cooke in so many instances, that they must hold his general agency proved until that proof is annulled by contrary evidence.

The Committee determined "that there was evidence sufficient to establish a *primâ facie* case of agency with regard to Cooke."

Dasent's case.

Acts sufficient to establish *primâ facie* case of agency.

The next case of agency was that of a barrister of the name of Dasent. This gentleman, it was admitted, had, previously to his having been called to the bar, been for several years a pupil of Mr. Kelly, and had been employed by him to canvass during two days that he was obliged to be absent from Ipswich. It was also proved that Mr. Dasent had frequently attended at the room called the committee-room, at the White Horse, and that he had after the election paid for a pair of trowsers bought by Mr. Kelly.

On Mr. Hill proposing to examine a witness as to a conversation between him and Mr. Dasent, an objection was taken to the reception of the evidence of this conversation, on the ground that Mr. Dasent was not proved to have been an agent of the sitting members.

(*x*) Clifford 371; and see *Honeywood* v. *Geary*, 6 Espinasse, 119.

Mr. Pollock contended that Mr. Dasent was not proved to be an agent of the sitting members, or either of them, except for the two days for which Mr. Kelly was absent from Ipswich; and admitted, that if during those two days he had committed any acts of bribery, his acts would, according to the resolution of the Committee respecting Cooke, have been admissible in evidence; but contended that he was not a general agent, and that his acts and declarations were therefore inadmissible.

Mr. Hill contended that a sufficient *primâ facie* case of agency, with respect to Mr. Dasent, had been established, and referred to the case of *Felton* v. *Easthope* (*y*).

A member of the Committee inquired of the counsel for the sitting members, whether, if the Committee were of opinion that Mr. Dasent had been appointed an agent by either of the sitting members, it would not be necessary on his part to show that that power had been withdrawn.

Mr. Pollock contended that it appeared upon the evidence that the power was a limited power, and ceased on Mr. Kelly's return; and commented on the *dictum* of Lord Tenterden in *Felton* v. *Easthope*, as occurring merely in a summing up to a jury in a *Nisi Prius* case, and has been since very much doubted.

The Committee resolved "that a *primâ facie* case of agency is established against Mr. Dasent."

Case of Bribery.

The first case of bribery which was proceeded with on the part of the petitioners was that of John Brown. It was deposed that the sitting member, Mr. Kelly, accompanied by Mr. Charles Grose, came into a shipbuilder's yard, where Brown was working, and that Mr. Kelly asked him for his vote; that Brown said, "I tell you as I always told you, that I shall never vote for a party till that bill was paid." Mr. Charles Grose re-

(*y*) Rogers on Elections, p. 220.

plied, "Say nothing more about it, for I will pledge my word to see your bill paid;" that Brown then went on to make some further complaints as to the language that was made use of to him, when he carried his bill (the amount of which was not mentioned) to the committee on a former election of candidates in the same interest as the sitting members, and of their having brought his father from Harwich to vote, and not having carried him back again; that Mr. Kelly said "I do not know any thing more about that, Sir, but Mr. Grose will see you paid;" and that Mr. Kelly and Mr. Grose then shook hands with him and went away.

The next case was that of Thomas Dewey, who was examined and declared that he lost his berth as a mate on board a vessel of Mr. Henry Aldridge, the Friday before the election; that on the Monday preceding he went to the sitting members' committee-room, where Mr. Dundas promised to get him a place in the Custom-house if he was returned, and Mr. H. Aldridge, who was with Mr. Kelly, promised to restore him to his berth if he voted for the sitting members; upon which Mr. Kelly said "that will be all right—nothing can be fairer than that." The credit due to this witness appears to have been destroyed upon his cross-examination, by the production of a letter from him to one of the returning officers, containing statements relative to the promises he alleged to have been made to him on the part of the petitioners, which he acknowledged to be false.

The third case was that of George Cunnold. He was a tailor, and had made a pair of trowsers for the sitting member, Mr. Kelly, just previously to the election. On the evening of the first polling day he was sent for and had a long conversation at Mr. Kelly's lodgings with Mr. and Mrs. Kelly, and a barrister of the name of Dasent, in the course of which he was asked for his vote, but

which he declined to promise. On going away he was accompanied by Mr. Dasent, who left him at an Inn called the White Lion, and he was immediately joined by a person of the name of Arthur Bott Cooke, (with regard to whom the Committee had previously decided that a *primâ facie* case of agency to the sitting members had been established). Cooke then offered Cunnold £20 if he would vote for the sitting members, of which £10 should be paid then, and £10 conveyed to him in a parcel within ten minutes after he had voted. Cunnold, who deposed that he was so astonished he knew not what to say, answered, that he did not put much faith in promises; upon which Cooke repeated his offer, and they parted. Cunnold then consulted with one of his friends, Mr. Cowell, a wine-merchant, how he should act, and upon his advice went back to Cooke, who told him, if he would be upon the Hill next morning at eight o'clock he should have the £20. Cunnold did not keep his appointment, and Cooke then called upon him, but nothing seems to have been arranged definitively between them at that time. Cunnold then took the advice of Mr. Wason, one of the candidates, who confirmed that previously given him by Mr. Cowell. Cunnold, upon another interview with Cooke at a public-house, agreed to accept his terms, and it was agreed that the £20 should be paid him before he voted. Cunnold shortly afterwards went home, and was followed by Cooke arm in arm with a gentleman who was then unknown to Cunnold, but who was afterwards proved to be Mr. Pilgrim, a clerk in the office of Messrs. Sewell, Blake and Sewell, at Norwich, and a coroner for one of the divisions of the county of Norfolk. Cooke passed by Cunnold's door, but Pilgrim rapped at it, and was let into the house by Mrs. Pite, the aunt of Cunnold. Pilgrim gave Cunnold a parcel directed to him, which Cunnold opened and found to contain four five pound notes of the bank of Messrs. Bacon and Co. of Ipswich. Cunnold upon this told Pilgrim, that he thought he ought

not to take that sum of money without giving him something to drink. He then went out and got a bottle of sherry from Mr. Cowell. Pilgrim and he then took several glasses of wine together, and they gave one to Mrs. Pite. When Pilgrim went out, Mr. Cowell, his brother, Mr. Alexander a banker, Mr. Morrison the candidate, and several other gentlemen who had been informed by Cunnold and Mr. Cowell of the purpose of his visit, and who were waiting intentionally on the outside, saw him, and one of the Mr. Cowells followed him till he saw him join Mr. Kelly in the street. The numbers of the notes were taken by Mr. Alexander and Mr. Cowell. Cunnold afterwards went and voted for Morrison and Wason, after showing at the poll the notes which had been given him to induce him to vote on the other side. Cunnold afterwards gave £20 to the Suffolk Hospital. Cunnold's evidence was confirmed by that of Mr. Alexander, Mr. Cowell, and Mrs. Pite.

The fourth case was that of King Garnham, who deposed to a promise of being put on the foundation of a charity, by a druggist, named Arthur Bott Cooke, in consequence of which he gave his vote for the sitting members. His evidence was partially confirmed by his daughter.

The fifth case was that of Horatio George Coe, who deposed that Cooke made him a promise of five pounds if he would vote for the sitting members; that he went and voted for them, and, going back to the inn where Cooke was, a gentleman, whose name he did not then know, gave him five pounds. In this account he was corroborated by another witness, who overheard and saw the greater part of the transaction.

The sixth case was that of Robert Bird, who deposed that a person of the name of Gladdin called him out of the tap-room into the yard of the White Lion public-

house, when Mr. Dasent gave him a five pound note to vote for the sitting members; and that he went immediately to the poll and voted for Morrison and Wason. He produced the note before the Committee, and his evidence was supported by that of a person named Goading, who described himself as a waiter at the tap, and who deposed that he saw the note given by Mr. Dasent, and afterwards, together with Gladdin, accompanied Bird to the hustings.

The seventh case was that of John Frost, who deposed that the sitting member, Mr. Dundas, on hearing that he had a son at sea, asked him if he would like a vessel for his son, and said he would not mind £300 or £400 in a share of a vessel with him. Upon cross-examination, Frost confessed that he had been convicted and imprisoned two years for a conspiracy. His evidence, however, was partly confirmed by that of another witness.

The eighth case was that of Aaron Warde, a smith, who was called and deposed to some conversation with Mr. Dundas, in a room at a public-house, called the White Lion, in which Mr. Dundas asked him whether he would like to go into business; but the conversation was interrupted.

A bricklayer, of the name of John Neale, was called, who deposed to an expression of Mr. Kelly, in a conversation with him, "that it would be better for him to be on their side, for they were determined to support those and those only who supported them:" and another witness of the name of Richard Cole was called, apparently for the purpose of proving a case of bribery; but their evidence came to nothing.

Evidence was also given, on the part of the petitioners, to show that unavailing endeavours had been made to find Mr. Dasent, A. B. Cooke, and Pilgrim, and also two persons named Bond and Clamp, in order to serve them with the Speaker's warrant, and that they had left their usual dwelling-places.

At the conclusion of the cases of bribery on the part of the petitioners, evidence was entered into on the part of the sitting members, in order to contradict and explain it.

With regard to the first case (that of Brown) Mr. Charles Grose was called, who denied any declaration of Mr. Kelly to Brown that the witness would see him paid; and stated, that Mr. Kelly only told the voter, when he complained of not having been paid, that there must be some mistake, for that he knew the gentlemen well of whom he complained, and that if they owed him the money they would assuredly have paid him; that the witness then told the voter that he would make some inquiry about it, and would do all he could to get it settled; and that the voter declined to make any promise at all of his vote to Mr. Kelly, although that gentleman pressed him for it, after the witness had promised to do all he could for him.

The evidence given by Thomas Dewey, in the second case, was distinctly contradicted by Mr. H. Aldridge, as to the alleged conversation between that person, Mr. Kelly, and Mr. Henry Aldridge.

In order to contradict the evidence in the third case of Cunnold two witnesses were called, who deposed that they were present when Cunnold promised first that he would vote for the sitting members, and then that he would not vote against them. Several other witnesses deposed that he appeared to be very much affected by liquor, at the periods immediately prior and subsequent to Mr. Alexander paying him the visit which he had declared had immediately followed his receiving the bribe from Pilgrim. One witness (Batley) swore that immediately upon Mr. Alexander's quitting the house, in company with the other gentlemen who went there, he only went as far as the corner and back again, and that he, witness, then said to Mr. Alexander, "What, have you not done with him yet?" and a minute or two afterwards went into his own house, which was next door to

Cunnold's, and, from a window in it, saw Cunnold in his yard, with notes of Mr. Alexander's bank in his hand; that he had then gone down stairs, and through Cunnold's house into his yard; that Cunnold then put the notes into his pocket, and he said to Cunnold "What, have you been bribed?" to which Cunnold replied, "Yes, Alexander gave me these;" and that he afterwards told him that he should do Alexander, and vote for Kelly and Dundas. It appeared that Cunnold had, after his visit from Mr. Alexander, dined with this witness, Batley, and a person of the name of Cowey, and they accompanied him to the poll. Batley's evidence was confirmed by that of a person named Millar, who deposed to having seen Mr. Alexander return immediately after his first visit to Cunnold, and to overhearing Batley's remark to him, about not having done with Cunnold yet. Both Batley and Millar deposed, that after the departure of Mr. Alexander the second time they both went into Cunnold's house, and that Millar gave his wife a blue cockade: there was, however, some difference in the account which these persons (both of whom were severely cross-examined) gave of what passed on that occasion. Cowey, who was present, according to Batley's account, at the dinner, when Cunnold declared he should vote for the sitting members, was called on their part; and he deposed to having seen Cunnold drunk on that day, between twelve and one, at the White Horse, when he declared that he should vote for Dundas and Kelly; but he was not asked any questions in corroboration of Batley as to what passed at the dinner subsequently.

With regard to the fifth and sixth cases, which related to acts of bribery by A. B. Cooke, Mr. Sparrow, the Town Clerk of Ipswich, and Mr. John Grose, a solicitor of that town, deposed that a sum of money was paid by the sitting members into a bank, in their joint names, from which they defrayed all the legal expenses of the election; that they took the whole conduct of the election; that Arthur Bott Cooke was employed by them

for the specific purpose of paying some out-voters, (this account of his payments was produced;) that there was no committee for the sitting members; and that the room at the White Hart, which had been called a committee-room by the witnesses on the other side, was, in fact, a room open to all the members of the party, and to which they all resorted, from time to time, to meet, give and receive information. In this latter point, his evidence was corroborated by that of two other witnesses, one of whom had been chairman of a committee at Ipswich on a former election. With regard also to the bribery deposed to by Coe, a witness was called who deposed to Coe having, after the election, wished that God might strike his arm from his body if he had ever received a farthing from the Blues.

Mr. Dasent was also called with regard to the sixth, or Bird's case. He deposed that he had only canvassed in the place of Mr. Kelly, at that gentleman's request, for some days he was obliged to be absent from Ipswich during the canvass, on business in London, and had paid Cunnold's bill for him; and that he had done nothing more with regard to the election, but, on one occasion, endeavouring to bring up a voter to the poll, in which he did not succeed, and attending at the casting up of the numbers by the returning officers, which he did of his own accord. With regard to the interview between Mr. Kelly and Cunnold, his evidence differed in no material particular from that given by Cunnold. When asked by the Committee some questions respecting Robert Bird, he deposed that he did not act under the directions of the sitting members in any conversation he had with that person, and that he never had informed either them, or Mr. Sparrow or Mr. Grose, that he had had such a conversation. Mr. Rodwell also deposed that he was present, on a previous occasion, in the room at the White Horse, when Bird came, in company with Gladdin, and, pretending to be drunk, offered his vote for £5, upon which he instantly ordered them out of the room. Bird had, indeed, admitted this upon cross-

examination. The head waiter of the Golden Lion also swore that Goading had not been employed as a waiter there.

In order to meet the case made out on the part of the sitting members, the following evidence was called on the part of the petitioners:—Mr. Watts deposed to an offer having been made to him, by Mr. Sparrow, of work for the Blue (Charity) School, at Ipswich, if he would vote for Kelly and Dundas. This fact Mr. Sparrow had been previously cross-examined upon, and had distinctly denied the offer.

Mr. Alexander, the banker, and Butler, were also again examined by the Committee: the former denied having returned to Cunnold's house immediately after his first visit to it; the latter again repeated his statement, that Mr. Alexander had so returned by himself within two minutes after his first visit.

The general arguments of counsel in this case rested in a great measure on comments on the evidence. The following were the principal legal points that were raised in their addresses.

Mr. Hill and Mr. Austin in support of the petition.

By the common law of Parliament, as declared by the resolutions of the House of Commons, bribery has always been an offence, which, if proved to have been committed by an agent of the sitting member, invalidated his election; and if proved to have been committed by himself, rendered him incapable of sitting for the same place for a limited period. It was formerly supposed that the Committee in the *Barnstaple case* (*z*) had decided that an offer of a bribe not accepted, did not constitute bribery on the part of the offerer. This decision, however, was explained by one of the members of that Committee, in the subsequent case of *Wootton Bassett* (*a*), to have been completely misunderstood, and, if it had really been correctly reported in Peckwell, ought to have little weight as an authority, for it is directly opposed to the cases of *Sulston* v. *Morton* (*b*), and *Bush* v. *Raw-*

(*z*) 1 Peck. 91. (*a*) P. & K. 152, in notis. (*b*) 3 Burr. 1237.

lins (*c*), in which it was decided at common law that the offence was complete in the party offering the bribe, although the party to whom it was offered never voted at all, or voted for the opposite party. By the words of the statute indeed, if a voter shall "ask" for a gift or reward, he makes himself liable to the penalties of bribery, although his request may be refused. It seems, therefore, to follow that a person asking another to accept a gift or reward would equally be guilty of bribery, and subject to its consequences. It may be true that he would not be guilty so as to incur the penalties of bribery, but he would be so for Parliamentary purposes, for the statute is only declaratory of the common law of Parliament on the subject. It is a well-known principle of law, that the innocent intention of one of the parties to a criminal transaction cannot tend to exculpate the other; *Rex* v. *Eggington* (*d*).

With regard to agency at elections, the only sensible or useful meaning that can be put upon the expression is, that candidates shall be answerable for the conduct of those persons whom they permit to manage and conduct an election under their eyes in such a way that it is impossible they should be ignorant of those persons being concerned in their election, and being the means of securing their return. It is not necessary that they should be criminally answerable for the acts of such agents, for no person is criminally liable before a Committee, but they must answer for them to their constituencies and to the House of Commons, for they have adopted their conduct by accepting the seat which was the result of it, although they may not have been acquainted with every minute particular of it during the proceedings. This doctrine is indeed completely borne out by the judgment of Lord Tenterden, in *Felton* v. *Easthope* (*e*). For the purpose of avoiding the seat on

(*c*) Sayer, 289.
(*d*) 2 Bos. & Pul. 508.
(*e*) Rogers on Elections, p. 220.

the ground of bribery and corruption, it is not necessary to prove agency at all, for if it be proved that those crimes and misdemeanors were committed to a considerable extent, although no proof has been given to connect the members with the parties guilty of such misconduct, and even though it be clear that those members had been in entire ignorance of the acts which such persons were daily and hourly committing, the seat will be voided. The difference is, that in the case where the principal is fixed with the knowledge of these acts, he will be incapacitated from sitting again, but, where he is not fixed with it, he may sit again. With respect to voiding the election, the consequences are the same in either case. This position is supported by the cases of *Dumferling* (*f*), *Bridgewater* (*g*), *Hertford* (*h*), *Liverpool case* of 1831 (*i*), and *First Dungarvon* (*k*). If bribery is proved indeed to have existed in many cases, unless the majority be such as can only be obtained in the largest towns in the empire, the presumption is that it is an unfair majority by which the seat has been obtained, for fifty cases will remain undiscovered for one which is detected and proved. It may therefore be fairly inferred that in such a case the real and fair majority is in opposition to the successful candidate.

Mr. Harrison and Mr. Kelly for the sitting members.

On the subject of agency, Committees have always been unwilling to admit any but the strictest proof of it: *Mitchell case* (*l*), *Ilchester case* (*m*), *Honiton case* (*n*), *Ilchester case* of 1803 (*o*), *Dublin case* of 1831 (*p*), *Bristol case* (*q*), *Helston case* (*r*), *Chester case* (*s*), and *Liverpool case* of 1812. The offer of a bribe which is not accepted does not constitute a bribe. It was so decided in the *Tam-*

(*f*) 1 Peck. 15.
(*g*) Ibid. 102.
(*h*) P. & K. 541.
(*i*) Printed Minutes.
(*k*) *Ante*, p. 1.
(*l*) 1 Lud. 84.
(*m*) 1 Lud. 465.
(*n*) 3 Lud. 159.
(*o*) 1 Peck. 302.
(*p*) P. & K. 161: in notis.
(*q*) P. & K. 574.
(*r*) P. & K. 552, in notis.
(*s*) Cor. & Dan. 72.

ton (*t*), *Coventry* (*u*), and *Seaford* (*x*) *cases;* and their decisions were founded on motives of sound policy, for what could be more dangerous than to leave the seat of a member at the mercy of any one who might choose to swear that the member had offered him a bribe, and that he had refused it. There is no case in which a sitting member has been unseated by the decision of a Committee on the ground of general bribery having been used to promote his election, unless it was also proved that it was done by his agents or with his knowledge. In the *Liverpool case* of 1831, it was proved that Mr. Ewart was openly informed on the hustings of the system of corruption that was carried on in his favour (*y*). It was also proved on an application to him by a printer,

(*t*) Printed Minutes, 7th March, 1831.

(*u*) 1 Peck. 97.

(*x*) 3 Lud. 112.

(*y*) The following were the passages read by Mr. Harrison from the printed minutes of the evidence taken before the Committee on the Liverpool election in 1831.

Question. Was Mr. Ewart, during the progress of the poll, generally on the hustings? Answer, Yes.—Q. Was Mr. Ewart there at the time when Mr. Yates's name was called? A. He was.—Q. Where did you sit in the hall? A. On the table taking the votes.—Q. Where did the Mayor sit? A. The Mayor sat above. I was at the table and the members attended at each bar to see the voters.—Q. Then the members were near the voters? A. Yes.—Q. In a situation where they could see and hear? A. Yes.—Q. Where was Mr. Yates? A. Immediately under the table between me and Mr. Ewart.—Q. Can you tell me the distance between Mr. Ewart and Mr. Yates at the time when Mr. Yates's name was called? A. Not more than a couple of yards.—Q. When Mr. Yates's name was called, did he say any thing, and what was it?—A. He said they had no right to give his name in, that he was friendly to Mr. Ewart, but that he would not allow his name to appear in the list where such notorious and shameful bribery and corruption was going on, and he would not allow his vote to be taken; and his name was struck off.—Q. Was it or not said in such a tone and manner as that Mr. Ewart, whom you have described to be within two yards, could hear it? A. I should think he might, but Mr. Yates had his face towards me, and his back to Mr. Ewart at that time.—Q. Was the poll going on while Mr. Yates said this, or did they stop while his name was erased? A. I was receiving the vote and entering the name, the poll was going on.—Q. Upon your coming to Mr. Yates's name, he made this declaration? He did.—Q. Did Mr. Ewart say anything at the time he made that declaration? A. Not that I heard or recollect.—Q. Was

complaining that he had been ill used by his committee, he said he would inquire after it, and the printer got the work the next morning; and there was also proof of his having interfered with respect to ordering beer at one of the public-houses in his interest. So far was the Committee in that case from sanctioning the doctrine that evidence of the acts of persons could be received as against the members, unless their agency was previously established, that many instances can be found in pages 20, 21, 22, 24, and 78 of the printed minutes, where questions having that tendency were waived before it. Both in the *Newry* (*z*) and *Ennis* (*a*) *cases*, bribery was proved to have been practised by the partizans of the sitting members, but they retained their seats, because no proof was given that they or their agents were concerned in or acquainted with it.

The Committee resolved "That bribery and corruption did exist, and were practised at the late election for the Borough of Ipswich, but that no illegal acts have been established against the sitting members.

"That Arthur Bott Cooke, John Bury Dasent, and John Pilgrim, were guilty of bribery at the late election; and Arthur Bott Cooke, John Pilgrim, John Bond, and —— Clamp, have absconded, in order to avoid the personal service of the Speaker's warrant."

After this resolution the petitioners entered into the scrutiny, which commenced on the 15th of April. On

Mr. Ewart before you at that time when you turned in a direction to see where he was? A. Yes.

At another time it was proved by another witness, "Mr. Ewart asked me for my vote and interest," I said "Sir, I cannot vote for you, because there is the same system of bribery going on in your favour, which has been so much the practice in borough elections, and much in this borough in particular." Mr. Ewart replied, "Sir, I am very sorry for it." The same solicitation having been made by Mr. Denison, I made the same answer to him. Mr. Denison replied, "I am excessively sorry, Mr. Yates, that human nature is so corrupt as to render those practices necessary."

(*z*) P. & K. 149.

(*a*) P. & K. 528.

the evening of that day the Committee obtained permission of the House to adjourn till the 18th of May, when they again met, and the scrutiny was proceeded with until the 30th of that month, when Mr. Hill, on the part of the petitioners, informed the Committee that the Chairman's warrant had been served upon John Pilgrim, who had, however, (when on the point of obeying it,) been arrested by order of his employers, Messrs. Sewell, Blake and Sewell, at Norwich, on a charge of embezzlement, the investigation into which had been adjourned by the magistrates before whom he had been taken until that day. Mr. Hill then proposed to call witnesses to prove these facts.

Evidence may be received to prove that a witness has been improperly detained, although a decision has been come to by the Committee on the charge in support of which that witness was originally proposed to have been called.

Mr. Kelly on the part of himself and his colleague (after an objection to his being heard at all upon the point had been taken and overruled,) opposed this application, on the grounds that Pilgrim was only stated to have been required as a witness on the part of the petitioners to prove the charge of bribery against the sitting members, and that charge had already, after a long investigation, been disposed of by the Committee, and could not be re-opened. If, however, it was intended to urge any charge of conspiracy between this witness and any of the agents of the sitting members, for the purpose of keeping him away and causing him to withhold his testimony, the Committee were not a tribunal who had any jurisdiction in a case of conspiracy.

The Chairman stated, that if the application to the Committee was to produce evidence to show that the witness had been tampered with, or improperly detained, they were bound to hear evidence to show why their warrant had not been complied with.

Mr. Kelly stated that he did not object to the hearing of evidence on that point, but objected to it in that stage of proceeding, when the sitting members were only prepared to go on with the scrutiny, and that he should object to its being taken as preparatory to the opening

of any case for the re-entering into the question of bribery, or of raising a question of conspiracy.

The Committee determined "that the witnesses should be examined."

Evidence was then given by a clerk of the petitioners' agent, that he had gone down to Norwich to serve Mr. Pilgrim with the Chairman's warrant, and had proceeded to his house the preceding morning (28th of May) for the purpose of serving him; that he was unsuccessful in doing so at his first attempt, from the resistance on the part of Pilgrim's family; that after some interference on the part of Mr. Jay, Pilgrim's attorney, he was enabled to serve him. On another visit to his house, he agreed to accompany the witness to London; that he then took places for Pilgrim and himself in a coach for London, but that Pilgrim was prevented from proceeding on the journey by being arrested on a charge of embezzlement by Messrs. Sewell, Blake and Sewell, and that the magistrates (Mr. Bignold and Mr. Booth) before whom he was taken, had, after hearing part of the evidence against him, adjourned the case until one o'clock that day (the 29th), although the witness had informed them that Pilgrim had been served with the Chairman's warrant. Another witness was called, who deposed to Pilgrim's having been in London during the sitting of the Committee, that Mr. Clipperton the agent, and Mr. O'Malley, one of the counsel for the sitting members, had called upon him during that time, and that the witness had himself accompanied Pilgrim to Mr. Clipperton's office. Mrs. Clipperton, the wife of Mr. Clipperton, was also called, but upon being informed that she might decline answering any question the answer to which she conceived had a tendency to criminate either herself or her husband, she declined to answer any question.

After this evidence had been taken, Mr. Hill applied to the Committee to adjourn from day to day until Pilgrim was produced as a witness before them, for which

purpose a fresh warrant by the Chairman had been addressed to the High Constable (*b*) of Norwich, in whose custody he was, and the gaoler of that city, and a habeas corpus was intended to be that day moved for before the Court of King's Bench (*c*).

Mr. Kelly opposed the proposition for an adjournment, and expressed his desire that the scrutiny should proceed.

The Committee determined that they would proceed to the scrutiny the next day.

The Committee proceeded on the next day, the 30th of May, with the scrutiny. On the 1st of June Pilgrim was brought up by the gaoler of Norwich; and Mr. Hill then proposed to examine him, in order to show that he had been kept out of the way by the agents of the sitting members, for the purpose of preventing his being examined before the Committee, and also that he had been the agent of the sitting members during the election, and had been guilty of acts of bribery. This proposition was objected to on the part of the sitting members.

Mr. Kelly:

The charge of bribery against the sitting members, after a laborious investigation, and the examination of a

After a case of bribery has been determined upon by a Committee, it may be re-opened on evidence which had not been brought forward on the preceding occasion.

(*b*) "House of Commons.—Select Committee on the Ipswich Election.

Veneris, 29 *die Maii*, 1835.

Patrick Maxwell Stewart, Esq. in the Chair.

Ordered,—That Philip Barnes, the gaoler of the gaol at Norwich, do attend this Committee on Monday next, at eleven o'clock, and bring with him in his custody John Pilgrim, for the purpose of being examined by this Committee.

P. M. Stewart, Chairman."

On Saturday the 8th another warrant was issued by the Chairman in similar terms, addressed to Barnes, alone, as high constable of the city of Norwich, and county of the same.

(*c*) An application was made to the Court of King's Bench, on the afternoon of the 29th of May, for a *habeas corpus ad testificandum* for Pilgrim, by Mr. Hill, who cited *Sir Edward Price's case*, 4 East, 587.

The Court granted a rule *nisi*, and ordered it to be served on the gaoler of Norwich; but as Pilgrim was afterwards brought up by the gaoler, on the Chairman's warrant, no further proceedings were taken in that Court.

large body of witnesses on both sides, had been terminated by the verdict of the Committee on the 14th of last April, by which they had found certain parties guilty of bribery, and others of absconding to avoid the service of the Speaker's warrant; but had acquitted the sitting members of all participation in those charges. So much was the case closed on each side, that if the separate and distinct charge of the election not having been made by a majority of legal votes, had not remained, the Committee must have made their report immediately to the House in favour of the sitting members. If even the scrutiny had been immediately proceeded with, it must long since have terminated; and, as far as regarded the question of bribery, the report of the Committee, in favour of the sitting members, would have remained unaltered. An adjournment had, however, taken place for the convenience of the Committee, followed by a scrutiny which had lasted a fortnight, and which must have closed in the course of the ensuing week. Was it fair upon the sitting members to call upon them to undergo a fresh trial upon a charge of which they had been so long ago acquitted, and which, had it not been for the fortuitous delays that had taken place, it would have been impossible to revive? In the records of Parliamentary cases no instance of such a mode of procedure having been had recourse to was to be found. If analogies were to be sought in the practice of other tribunals, no maxim was better established in the Courts of common law than that *nemo debet bis vexari pro eadem causâ*. So strictly was indeed this rule observed in the King's Bench, that no new trial would be granted after an acquittal on an indictment, even against parishioners for not repairing a road. If, however, it was intended to raise a new charge against the sitting members or their agents, of having conspired with the witnesses, in order to prevent their giving testimony, such a charge was not within the cognizance of the Committee; for it did not

form any part of the petition which was referred to them by the House. It was perfectly open to the petitioners to prosecute any charge they might choose to make of conspiracy in a Court of common law, or of breach of the privileges of the House of Commons, at the bar of that House, should the Committee think proper to report that any such breach had been committed. It was not, however, in unison either with the practice of Committees or of any tribunal proceeding according to the rules of law to suffer accusations to be re-opened, which had previously been decided to have been unfounded, on account of other accusations being made of other offences over which that tribunal had no jurisdiction. If such a practice was permitted, a wealthy petitioner would, with perseverance, be enabled, if not to unseat, at least to ruin, by the expense of his defence, any member whom he might think proper to attack.

The Chairman stated, "that as the Committee had made no report, it was their unanimous opinion, under the circumstances, that Mr. Pilgrim should be examined now, in the way he would have been if he had appeared in pursuance of the summons."

Pilgrim was then examined. He stated that he had been a coroner for the county of Norfolk for upwards of twenty years, and clerk to Messrs. Sewell, Blake, and Sewell, attornies at Norwich, for upwards of thirty years; that Mr. Blake, one of the partners in that house, had, in consequence of a letter he received from Mr. Kelly, sent him, together with a person of the name of Barnes, the chief constable of Norwich, over to Ipswich, to assist Mr. Kelly at his election. This letter, which had been delivered to the witness, was put in. It was in these terms:

"My dear Sir,

"I am going to avail myself of your kind offer about my friend Mr. Pilgrim. We want one or two active and faithful persons, who can and will work, by writing, running, talking, and any thing else, as need may be.

If, therefore, you can spare him, will you beg him to come here immediately, and inquire for me at the White Horse; perhaps you will let him know before he starts how long your convenience will allow him to remain. I have received your second satisfactory letter.

"Faithfully your's, FITZROY KELLY."

The witness stated that he set out immediately for Ipswich, where he arrived on the evening of the day of nomination. On the following day he was principally employed with Barnes, in the room called the Committee-room, at the White Horse, in arranging a list for the purpose of keeping the poll; and he also went with Mr. Sparrow and Mr. Cooke to canvass some voters. The following day was the first day of polling at Norwich, as well as at Ipswich, and the witness went back to Norwich for the purpose of voting there, but returned to Ipswich the same evening at the particular request of Mr. Kelly. He arrived about 10 o'clock, and went immediately to the White Horse, where there were a great many of the friends of the sitting members assembled; from thence he went to the house of Bond (one of the persons whom the Committee had, on the 13th of April, found to have absconded to avoid service of the Speaker's warrant,) where there was a smallar meeting of their friends, not exceeding seven or eight in number, of whom A. B. Cooke was one. A discussion then took place as to the voters who had not voted, and which of them might be obtained by presents of money, and it was arranged who should go round and visit those individuals. The witness accompanied Cooke in several visits to such voters, and delivered two small parcels, containing, as he believed, money, by the direction of Cooke, to two persons, at houses pointed out to him by Cooke. He returned together with Cooke to the room at the White Horse, where they made a report of what they had done to some of the persons there assembled. Both the sitting members were seen by the witness at this room, but he could not tell whether they were present

at the time when this report was made. The witness then went with Mr. Sparrow, the agent of the sitting members, to his house, and either on his way there, or in the committee at the White Horse, informed him what he had done in company with Cooke. At Mr. Sparrow's house he met Mr. Kelly. He could not, he said, state precisely whether he told Mr. Kelly what they had been doing, but Mr. Kelly stated, "that he would not lose the election for a considerable sum, but they were not to go to expensive means unless it was necessary," or something to that effect; and he requested the witness to exert himself, and asked him if he had any objection to sit up all night to oblige him, which the witness assured him he had not. He then went back to the White Horse, and he found the persons there very busy in making out lists of the voters who had not polled, and whom they agreed should be called upon the next morning. Mr. Sparrow joined them before they had finished this business. The witness then went to bed and rose early the next morning, and was then again employed in canvassing in company with different persons. In the course of this day he, by the direction of Mr. Sparrow, delivered ten or fifteen pounds (which he had received at the Golden Lion, either from Bond, or from Colonel Dundas, Mr. Dundas's brother,) to a person in the market place; and he also, by the direction of Cooke, delivered the parcel to Cunnold, in the manner which had been previously sworn to by that person. He also stated that he had told Mr. Sparrow and Mr. Cooke that he had been dodged, and that the circumstance of Cunnold's having exposed the £20 bribe on the hustings formed a subject of general conversation amongst the friends of the sitting members on the evening of the last polling day. Mr. Kelly and Mr. Dundas thanked him for his services, and Mr. Blake, his employer, also told him he would pay him for them.

The witness then deposed, that in consequence of a letter from Mr. Clipperton, the agent of the sitting mem-

bers, before the Committee, to Mr. Jay, of Norwich, who acted as his (Pilgrim's) solicitor, he went up with Barnes to London, a short time before the petition was presented. That he and Barnes met Bond, A. B. Cooke, and Clamp, at Clipperton's office; that Barnes was sent back to Norwich, because he had done nothing which made it necessary for him to leave the town; but witness, together with Bond, Cooke and Clamp, agreed to leave England in order to avoid being served with the Speaker's warrant. Money was given by Clipperton for that purpose to such of them as required it, and they, according to his advice, took false names, and the witness, in order to avoid detection, left some books and papers with his name on them, in the care of Mrs. Clipperton. The witness then went to France, in company with Clamp and Cooke, and he afterwards met Bond at Paris. He put in several letters, some of them inclosing money, which were written to him under the assumed name of Palmer, by Clipperton, during the time that he continued abroad. The last letter from Mr. Clipperton, dated the 17th of April, informed him of the adjournment of the Committee till the 18th of May, and that there was no reason for his absenting himself any longer; it also informed him that Mr. Keith, from Norwich, had called upon him, and, upon being informed of the books and papers left by the witness, asked permission to look over them, which he did; and finding that they all belonged to Sewell and Co.'s office, with the exception of a book and two letters, he took and forwarded them to Norwich.

The witness, Cooke, and Bond then returned to England, and had an interview with Mr. Clipperton at his office, and afterwards took tea with him, and he advised them to return home, as the case of bribery against the sitting members had closed. The policy of doing this was, however, doubted by the witness and Cooke. The witness called on Mr. Clipperton, with his solicitor, Mr. Jay, the next morning, when a discussion took

place as to the expediency of suing out a friendly writ in an action for bribery, as a protection to him. The witness then gave an account of an interview with Mr. O'Malley, one of the sitting member's counsel, the preceding week, in which that gentleman persuaded him to leave London, in order to avoid being served with a warrant to attend the Committee; and that Mr. O'Malley accompanied him in a hackney coach on the Uxbridge-road, where he left him. The witness then stated that he stayed three or four days at Hayes, near Uxbridge, until Mr. Jay came and brought him up to London, which he quitted the following morning and went to Norwich. He then stated the circumstances of his being served with the warrant, as previously mentioned, and that he was taken before the magistrates, Messrs. Booth and Bignold, who remanded him till the next day, Friday. On Friday and Saturday he was again under examination before the magistrates, and on Sunday (*d*) he was committed to the custody of the gaoler of the city, who, having been served with the Chairman's warrant, brought him up to London. At the conclusion of his examination in chief, the witness stated that Mr. Keith had come over to Calais, and had endeavoured to deter him from returning to England, on the ground of there being seven writs issued against him for bribery, and that he would surely be convicted. He also stated that he had not read Clipperton's letter informing him that his papers left in London had been given up to Mr. Keith until after Mr. Keith had been with him at Calais. The cross-examination of Pilgrim was prin-

(*d*) The witness was examined at some length upon the conduct of the magistrates, and the magistrates themselves were subsequently called as witnesses on the part of the sitting members. As, however, the resolution which the present Committee came to upon their conduct was not confirmed by that of a subsequent Committee specially appointed to inquire into it, and which entered more fully into evidence upon the subject, the details of what passed at Norwich from the period that Pilgrim was served with the Chairman's writ to the time he appeared before the Committee, are omitted.

cipally directed to shake his testimony, by showing that he had been in communication, through his attorney, with the petitioners; that his attorney had first proposed that he should leave England before the writ was issued; that Mr. Keith had come over to Calais, in company with Mr. Wood, the London agent of his house, in order to dismiss Pilgrim, for embezzlements in their service; and that he had many years ago been guilty of some misconduct in taking a stamp, for which he had been forgiven by his employers. On being pressed on the point as to whether Mr. Kelly was ever present at any conversation about procuring votes by money, he stated that Mr. Kelly was in the room when such a conversation was going on at the White Horse amongst several persons, of whom Barnes was one, but he could not say whether that gentleman heard it.

On the termination of Pilgrim's evidence, the Committee adjourned over a day, with the consent of counsel on both sides, and on the 5th of June evidence was adduced on the part of the sitting members to rebut his testimony.

Mr. Sparrow denied that Pilgrim had ever during the election informed him that he had been employed in bribing voters, or that Mr. Kelly had, at the conversation at his house in the evening of the first day of the election, used the expressions, "that they were not to go to expensive means unless necessary," or any thing to that effect, although he had used the general expression, "he would not lose the election for any money." He also stated that the fact of Pilgrim's having bribed Cunnold was not the general subject of conversation at the dinner on the second day of the election, although Cunnold's having shown the notes at the poll was, and that he himself never heard who had bribed that person until many weeks after the election. On his cross-examination he stated that he and Mr. John Grose both knew that Cooke and Bond were going away to avoid the service of the Speaker's war-

rant, and that Pilgrim had written to him stating he was anxious to go away for the same purpose, and had been referred by him to Mr. Clipperton; and he also stated, that during the pendency of the proceedings before the Committee he had written to Cooke.

Mr. Blake, one of the partners of Sewell, Keith and Blake, was also called, who deposed that he had sent Pilgrim to assist Mr. Kelly at the election as a clerk, without any idea of his being employed in any illegal way, and that afterwards, in consequence of the discovery, during Pilgrim's absence, of some acts of embezzlement by him, Mr. Keith, another of the partners, was sent to find him, with a letter of dismissal signed by all the members of the house, and with directions to inform him that he would be prosecuted if he ever returned to Norwich. He declared that the house had acted in this manner without any communication with the sitting members.

Mr. Keith, another of the partners in the house of Sewell & Blake, deposed that a desk of Pilgrim's had been opened during his absence, and that by means of the papers discovered in it they had come to the knowledge of acts of misconduct on his part, which had determined them to dismiss him; that he (Mr. Keith) had for that purpose come to London, and applied to Mr. Clipperton to know where Pilgrim was; that Clipperton had informed him that Pilgrim was at Calais, and had also given up to him the papers left with Mrs. Clipperton by Pilgrim; that thereupon he, accompanied by Mr. Wood, the London agent of his house, had gone to Calais, seen Pilgrim, charged him with his embezzlements, which he did not deny, and dismissed him, with a threat of prosecution if he ever returned to Norwich or this country. He stated, that in the course of their conversation he had told Pilgrim he had heard there were several cases of bribery against him, but he concurred with Mr. Blake in saying that the

course pursued by their house was without any communication with the sitting members.

Mr. Wood confirmed, in a great measure, the account given by Mr. Keith as to what took place at Calais.

Two letters of Mr. Jay to Mr. Clipperton, one dated the 14th and the other the 20th of February, 1835, were also put in, the first asking information as to the time when warrants for the attendance of witnesses on the petition were likely to be issued; and the second stating the intention of Pilgrim to keep out of the way, which it stated that the writer, as a professional man, thought it prudent for him to do; and another letter from Clipperton to Jay was also put in on the part of the petitioners, dated March 4th, 1835, and giving various messages from Pilgrim, therein described as away from home. Mr. O'Malley deposed that all communications between himself and Pilgrim were without the knowledge or authority of either of the sitting members, and that he had so informed Pilgrim at the time.

Mr. Bignold, one of the magistrates of Norwich, explained the conduct of himself and his brother magistrates with regard to the detention of Pilgrim.

Mr. Kelly summed up this evidence on the part of the sitting members on Saturday the 6th and Monday the 8th of June. On the rising of the Committee on the Saturday, Mr. Hill stated he had just had a most important communication made to him; that a packet of letters of the greatest importance had just come into the hands of the petitioners, and proposed to have them read at once.

Mr. Kelly protested against the case being re-opened, but declined arguing the question then.

On Monday morning Mr. Austin requested to know whether the Committee were prepared to give any opinion upon the application to admit certain letters referred to on Saturday.

The Chairman stated that the opinion of the Committee was, that it was too late to put in the letters, and

therefore called on Mr. Kelly to proceed with his summing up.

The arguments on both sides, after the termination of the evidence, consisted principally of comments upon it. Mr. Kelly also insisted that the sole question before the Committee was the validity or invalidity of the election, which could not be affected by any thing done subsequently to it, however wrongly, by the agents of the sitting members, in order to keep away witnesses from the investigation; that neither the letter of the 31st December, 1834, from himself to Mr. Blake, or any subsequent act by him, constituted Pilgrim his agent for general purposes, still less for the purpose of bribing voters; that even if he had made Pilgrim his agent, he had not made him the agent of Mr. Dundas, and that Pilgrim, as an accomplice, according to his own confession, in bribery, ought not to be believed, except where he had been corroborated; and that on all the main facts tending to connect either the sitting members or their agent with either knowledge of the bribery, or employment of him as a general agent, his testimony had been contradicted.

On the part of the petitioners, Mr. Hill insisted that by means of the evidence of Pilgrim and the letters now for the first time produced, a clear case of bribery had been made out sufficient to call upon the Committee to vacate the seats; that the sitting members having stood in the same interest, the one must be held as the agent of the other in all acts relating to the election; that consequently Pilgrim having been employed by Mr Kelly, must be held also as the agent of Mr. Dundas; and that the agents of the sitting members having been proved to have been the main instruments in inducing the most material witnesses to abscond in order to avoid being summoned to appear before the Committee, they ought to pay the costs of the proceedings, which had been so long protracted by the misconduct of those whom they had employed to conduct their case.

At the termination of Mr. Hill's reply, the Committee came to resolutions declaring the election void on the ground of bribery, and, with some small variations, similar to their final resolutions, which they reported to the House, on all other points except with regard to the scrutiny, which had been interrupted on the discovery of Pilgrim, and on which the majority of votes was still in favour of Mr. Kelly and Mr. Dundas.

On the following morning, Mr. Pollock, on the part of Mr. Kelly and Mr. Dundas, called upon the petitioners to state what course they meant to pursue. The counsel for the petitioners stated, that as their principal object had been obtained by the resolution the Committee had come to of vacating the seats, they should decline proceeding with the scrutiny.

Costs of the whole of an inquiry given against members who were deprived of their seats on the ground of bribery, and whose agents had kept witnesses away from the Committee, although they were successful in retaining the majority of votes on a scrutiny.

Mr. Pollock then applied to the Committee to rescind one of their resolutions, which was in the following terms :—" Resolved that the opposition to the said petition does appear to be frivolous and vexatious."

Mr. Pollock against the resolution of the Committee.

When the Committee framed its resolutions yesterday, the case on the part of the petitioners was not closed, for they still claimed the seats for Messrs. Morrison and Wason, on the scrutiny of votes. The resolutions could therefore only apply to those parts of the case on which the Committee had come to a final determination, but they could not and ought not to apply to those parts of it which were still under consideration, and on which they might probably come to a resolution in favour of the very parties against whom their decision had been given on the previous part of the case. By the abandonment of the scrutiny to-day, the petitioners have confessed themselves to have failed on that part of their petition, and indeed no doubt could exist upon the point; for, after an investigation of forty days, Mr. Morrison and Mr. Wason were still in a minority on the poll. Would it then be just, or in consonance with the ordinary principles of law or of equity,

that the Committee should, by pertinaciously adhering to the terms of an incautiously worded resolution, make the party who were successful pay the costs of their adversary, who had failed in establishing a claim to their seats? Would it be even fair to call on Mr. Kelly or Mr. Dundas to pay any part of the costs incurred by the petitioners in their attack upon the conduct of the returning officers, which the Committee had previously declared to be unfounded?

There is no part of their jurisdiction which Committees have been so cautious in exerting as that of giving costs against members who have been elected and returned to the House. Mr. Rogers, in his Treatise on the Law and Practice of Election Committees (*e*), says, "It would seem they have been very slow to report that the opposition made by the person in possession of the seat was frivolous and vexatious;" and he then cites the *Southwark* (*f*) and *Flintshire* (*g*) *cases*, in which, although the ineligibility of the sitting members was notorious at the time of their election, yet the oppositions made to the petitions against their return were not declared frivolous and vexatious. In modern cases Committees had followed a similar line of conduct. In the *Hertford* (*h*) and *Warwick cases* (*i*) not only had the Committees deprived members of their seats on the ground of bribery and corrupt practices, but the corruption was extended so far as to put both the towns in danger of being disfranchised, and yet no decision had been made by either of those Committees to entail the burthen of costs on the members who had unsuccessfully endeavoured to maintain their seats.

The Chairman said:—"Both these latter cases are familiar to us. We would wish you to confine yourself in your argument to cases where three or four of the principal

(*e*) p. 315.
(*f*) Clifford, 342.
(*g*) 1 Peck. 528.
(*h*) P. & K. 541.
(*i*) P. & K. 535.

witnesses had been abducted by the agents of the sitting members."

Mr. Pollock :—There is no case precisely like the present. The *Oxford* (*k*) *case* bears perhaps the strongest similarity to it, for there the seat of the sitting members was declared void on the ground of treating; but the petitioners were unable to establish their claim to it on the scrutiny. The decision of the Committee in that case, however, was, that the opposition was neither frivolous nor vexatious. Here the sitting members are, as in the *Oxford case,* successful on the scrutiny.

The Chairman :—We never should have come to the scrutiny if there had been fair play in the other part of the case.

Mr. Pollock :—The Committee must have entered upon the scrutiny if the petitioners had chosen to demand it, for it formed part of the petition referred to them; they must have continued it now if the petitioners had not declined to proceed with it. Whatever resolution, therefore, the Committee may think proper to come to upon the costs of that part of the investigation which had been occupied with the question of bribery, it is to be hoped that they will not visit Mr. Kelly and Mr. Dundas with the payment of the costs of that part of it which had been occupied with the scrutiny, and the charges against the returning officers, in which the petitioners had failed.

The Committee, without calling on the counsel for the petitioners to answer Mr. Pollock, resolved that they would adhere to their original resolution.

Mr. Austin then applied to the Committee to amend their resolution, by the insertion of the names of the parties to the opposition, which they intended to report as frivolous and vexatious, and he pointed out that the 58th section of the 9th Geo. IV. cap. 22, gave costs,

(*k*) P. & K. 58.

when the Committee reported to the House with respect to the opposition made by any *party or parties* who shall have appeared before them, that such opposition was frivolous or vexatious, the person and persons who shall have signed such petition shall be entitled to recover from *such party or parties*, or any of them, costs in the manner therein mentioned. Unless, therefore, the names of the parties were stated in the report, some doubts as to their liability would very probably be raised.

The Committee (after some discussion, in which Mr. Pollock opposed the alteration,) determined to vary the terms of it, by inserting the names of Mr. Dundas and Mr. Kelly.

Mr. Serjeant Merewether then, on the part of the returning officers, applied for their costs; but the Chairman intimated that the Committee would make no order on the subject.

Mr. Wason then submitted, that as bribery in this case had been committed in a manner so as to render it impossible to identify the parties who had been corrupted by it, and thus to strike off their votes on the scrutiny; and as the majority of Mr. Kelly and Mr. Dundas was now very small over him and Mr. Morrison, the Committee might declare them entitled to the seats. If Pilgrim had not been a stranger to Ipswich, he would no doubt have identified a sufficient number on the scrutiny as bribed votes to have entitled them to the seats in the regular course; and, as the case now stood on his testimony, there could be little doubt but the now subsisting majority had been obtained by corruption. He admitted that the application was novel, but he contended that it was founded on sound principles, and might safely be adopted.

The Chairman stated that the Committee, having no precedent before them of any Committee ever having complied with a similar application, could not entertain this proposition.

The final resolutions of the Committee, as reported to the House, were as follow:—

"That Robert Adam Dundas, and Fitzroy Kelly, Esqrs., are not duly elected burgesses to serve in this present parliament for the borough of Ipswich.

"That the last election for burgesses to serve in this present parliament for the borough of Ipswich is a void election.

"That the petition of Robert Gill Ranson, Richard Crawley, and Henry Haken, did not appear to the said Committee to be frivolous or vexatious.

"That the opposition to the said petition by the said Robert Adam Dundas, and Fitzroy Kelly, Esqrs., did appear to the said Committee to be frivolous and vexatious.

"That the Committee have altered the poll by striking off the names of Richard Bantoff, Horatio Beetham, John Cox, Thomas Etherington, James Hayward, Hermon Gullen, Abbott Lord, Samuel Osborn, Lawrence Squire, Robert Smith, Jeptha Waller, Abraham Wolsey, and Robert Barker, who were put upon the poll after the termination of the election; and also the names of Frederick Hewes and James Martin Howard, who were employed at such election by the sitting members; and also the names of John Brown, King Garnham, George Horatio Coe, Arthur Bott Cooke, Edward Bolton Finch, and William Coe Abbott, who were proved to have been guilty of bribery at such election.

"That Robert Adam Dundas and Fitzroy Kelly, Esqrs., were, by their friends and agents, guilty of bribery and corruption at the late election for the borough of Ipswich; and that Arthur Bott Cooke, John Bury Dasent, Esq., John Pilgrim, and others, were guilty of bribery at the said election.

"That John Bury Dasent, Esq., John Bond, Arthur Bott Cooke, Robert B. Clamp, and John Pilgrim, were guilty of absconding to avoid being served with the Speaker's warrant; and that John Eddowes Sparrow

and John Clipperton, the avowed agents of the sitting members, and Peter Frederick O'Malley, Esq., one of the counsel employed by the sitting members, aided and abetted them in keeping out of the way to avoid giving their evidence before this Committee.

"That (*l*) the said John Pilgrim having at length

(*l*) On the 3rd of July, 1835, the consideration of the matters connected in this and the succeeding resolution was referred to a Committee, consisting of the following members :—

Lord Viscount Ebrington, M.P. for North Devon.
Lord Viscount Eastnor, M.P. for Reigate.
Right Hon. Robert Cutlar Fergusson, M.P. for Kirkcudbright.
Thomas Estcourt, Esq. M.P. for Oxford University.
Sir William Molesworth, M.P. for East Cornwall.
Henry Aglionby, Esq. M.P. for Cockermouth.
William Gladstone, Esq. M.P. for Newark-upon-Trent.
William Miles, Esq. M.P. for East Somerset.
The Right Hon. Charles Watkin Williams Wynn, M.P. for Montgomeryshire.
Benjamin Hawes, Esq. M.P. for Lambeth.
John Evelyn Denison, Esq. M.P. for Nottinghamshire.

This Committee, of which the Right Hon. Charles Watkins Williams Wynn was appointed Chairman, made their report to the House on the 22nd of July, 1835, which was in the following terms :—

"Your Committee have experienced considerable difficulty in this inquiry from the apprehension of prejudging a criminal charge now in progress to trial by due course of law, but they have come to the following resolutions :—

"1st, That it does not appear to the Committee that the conduct of the magistrates, Samuel Bignold and Edward Temple Booth, Esqrs., before whom the said John Pilgrim was charged, was a breach of the privileges of this House.

"2nd, That it appears to the Committee that Thomas Moore Keith aided and abetted the procuring and continuing the absence of John Pilgrim, to prevent his giving evidence on the petition against the Ipswich election ; and that he used the charge of embezzlement as a means of inducing Pilgrim to remain in concealment for the same purpose.

"3rd, That on Pilgrim's return to Norwich an information was laid against him for embezzlement, which had the effect of delaying obedience to the Chairman's summons, and his attendance before the Committee on the Ipswich election, but that it does not appear to the Committee, from evidence before them, that there is any proof that these proceedings were taken for the purpose of producing such delay.

"4th, That it does not appear to the Committee, from the evidence before them, that any charge is proved against Joseph Sewell, John Blake, or John Joseph Blake.

been served with the Chairman's warrant, was prevented attending this Committee by being arrested on a charge of embezzlement made against him by Messrs. Sewell, Blake, Keith & Blake, under very suspicious circumstances.

"That the conduct of the magistrates, Samuel Bignold and Edward Temple Booth, Esqrs., before whom the said John Pilgrim was charged, appears to this Committee to be a breach of the privileges of this House."

CONDUCT OF THE RETURNING OFFICERS.

After the case of the petitioners with regard to bribery had been closed by the decision of the Committee on the 14th of April, the charge against the returning officers was entered into.

It was proved that on the morning of the first day of polling a person of the name of Laud had come up to vote, and an objection was taken to his being permitted to vote by an inspector on the part of Messrs. Morrison and Wason, on the ground of his having ceased to occupy the house in respect of which he was registered, and a barrister who acted as counsel for those candidates offered to argue the point of his right to vote. The returning officer, Mr. Bristo, who presided at the booth, declined, however, to hear the argument, saying, "We will take it as a tendered vote, and argue it afterwards." The same course was pursued afterwards with regard to various other voters, the objections being simply made to them, and the third question under the Reform Act not being tendered to them. Entries were then made of their names in the poll-books in this manner:—"Bantoft, hair-dresser, St. Mary, Tower, ten-

"Your Committee cannot conclude their report without adverting to the service of a summons from a Chairman of an Election Committee, for the purpose of obtaining the attendance of a person in custody. They apprehend that the most usual course is to resort to the House for an order, to be expressed by the Speaker's warrant, to that effect."

dered for Dundas and Kelly." On the casting up of the poll on the third day, Mr. Bristo declared it to be the intention of the returning officers to put all those votes (of which there was an equal number on each side) on the poll. The other returning officer, Mr. Cobbold, offered no opposition to this course; but expressed an opinion that the votes would not be allowed before a Committee of the House of Commons. The votes were then put on the poll, by putting marks in the columns under the names of the respective candidates for whom they had tendered. This course of proceeding appeared to have been consented to, if not suggested, by Mr. Kelly, one of the sitting members; and their agent, Mr. Sparrow, expressed a contrary opinion to that of Mr. Cobbold, as to the probability of their being allowed before a Committee; but no assent to it was given on the part of Messrs. Morrison and Wason. It was stated that Mr. Bristo's political feelings were in favour of the sitting members; and one of the witnesses declared, that the number of votes thus put on for the sitting members exceeded that put on for Morrison and Wason. No statement, however, was produced of the numbers thus added to each side; and it was proved that when Mr. Sparrow wished that the name of one Hathaway, who had tendered for Morrison and Wason, should not be put on, on the ground that the house he was then in possession of was worth only 8*l.* 10*s.* a year, Mr. Bristo refused to accede to the application, and put it on.

On Mr. Pollock (who appeared for the returning officers, in the absence of their regular counsel,) commencing to remark on this evidence, he was stopped by the Chairman. The Committee resolved, "That it was the opinion of the Committee, that no *animus* of an improper nature had been proved against the returning officers."

After the evidence of the petitioners on this part of their case had been closed, Mr. Pollock proposed to call Mr. Cobbold, whose conduct had not been impugned as a witness, on the part of the other returning officer.

Mr. Austin objected to this course, as Mr. Cobbold was legally responsible for the acts of Mr. Bristo, and could not, therefore, be called to exculpate his conduct.

The Committee having, however, expressed a wish that Mr. Cobbold should be called, Mr. Austin waived his objection, and he was examined accordingly.

Richard Bantoft's case.

Printed Minutes, p. 250.

The objection to this voter was, for "having been placed upon the poll by the returning officers after the legal expiration of the poll, contrary to the statute intituled "An Act to amend the Representation of the People in England and Wales."

It was proved that he was one of the voters objected to at the poll for change of residence, and afterwards put on by the returning officer, in the manner mentioned in the case of the charge against the returning officers, *ante*, p. 378. He had tendered his vote on the first day of the poll.

Mr. Austin against the vote.

As the vote in question was not taken on the first day when it was tendered, it could not be taken at any time afterwards. The provisions of the Reform Act have deprived the returning officers of all discretion as to the reception of votes. They must enter the votes of all persons whose names appear on the register of persons entitled to vote, when they tender them, unless they refuse to answer in the affirmative any one of the three questions which the 58th section of the Reform Act empowers the returning officers to administer, if they are required on the behalf of any candidate to do so. Bantoft might then have insisted on his name being entered on the poll books as a vote. If he had done so, he would, doubtless, have been required to answer the third question; and as he would most probably have declined to do so, his vote would not have been received. He did not insist, however, on its being entered as a vote, but was satisfied with its being entered as a tender.

Since the poll is now the taking of the votes in writing as delivered by the voters, the returning officers, after Bantoft had quitted the booth, had no power to take his vote even on the first day of polling: still less would they have power to do so in his absence, and after the two days, to which the time of polling is limited by the 67th section of the Reform Act, had expired, and when they had met for the purpose not of taking the votes, but of casting them up according to the provisions of the 68th section. If, however, Bantoft is to be considered as having made a tender, it is such a tender as ought not to have been received; for the only tenders that can now be legally made are, of such persons whose names have been omitted from the register, in consequence of the decisions of the revising barrister. Bantoft's name was not excluded from, but was on the register; and he did not therefore fall within the only class of persons whose tenders are now recognized by law. At the only time, therefore, at which this man might have voted, he did not vote; and any subsequent insertion of his name by the returning officers is illegal, and it is hoped that the Committee will so declare it, and expunge this illegal entry from the poll books. No argument could have been drawn from the consent of the candidates to such a proceeding, even if such a consent had been given on both sides; no such consent has, however, been given: and if it had, the present petitioners would not have been bound by it.

Mr. Pollock in support of the vote.

Bantoft actually voted the first day, and did not merely tender his vote. The carrying out his vote in the poll books on the third day by the returning officers, was merely a completion of what ought to have been done on the first day. When Bantoft had said he voted for Kelly and Dundas, he had done all that was in his power to do, and the returning officers ought to have entered his name as a voter; he had no means of procuring the due insertion of his name in the books other-

wise than by tendering his vote as a vote in the manner which the law directs. The 58th section of the Reform Act specifically directs that no person should be excluded from voting, except for not answering the three questions which that section permits to be tendered to him. None of these questions was put to Bantoft then, and the returning officers ought, therefore, to have received his vote. It would be unjust on the voter if he was to be prejudiced by the mistake of the returning officers, in not entering his name in the proper manner; it would be equally unjust on the returning officers, if they, having made a mistake, are not to have the power of rectifying it. The entry in the poll books now before the Committee is correct, as it ought to have been made when the vote was given. Surely the Committee will not alter a correct entry to the prejudice of a voter, to whom no question was put at the poll, and whose vote the returning officer was therefore bound to receive.

The Committee decided that the vote ought to be struck off the poll.

Horatio Beckham's case.

Printed Minutes, p. 269.

This voter had been placed on the poll-book by the returning officers, first, as a tender, and afterwards carried out into the columns as a voter, and under precisely the same circumstances as Bantoft; and the evidence against the vote of that person was read by consent, as equally applying to this case. The inspector for Morrison and Wason was also called, who proved that he had objected to this voter; and that, without any questions having been asked of him, his name had been entered as a tender.

Mr. Kelly, in support of the vote, contended that the voter had done all in his power to entitle him to be put upon the poll; that he ought not to be deprived of his vote from the fault of the returning officer in not immediately placing him upon it; still less was he to be injured by the laches of the agent of the candidates to

whom he was opposed, in not putting to him the third question under the Reform Act, which, for any thing that was proved before the Committee, he might have satisfactorily answered. If the returning officer had never entered his name as a vote at all, the voter might have claimed before the Committee to have it inserted; and the Committee would have inserted it, on proof of his having been registered and having tendered; and it would then have thrown upon the petitioners the onus of proving his disqualification, if any such existed. Under the present mode of proceeding, the voter was virtually struck off the poll, by the decision of a returning officer, made upon an objection, unsupported by evidence, never intended, even by himself, to have been final and conclusive. The result of the Committee's again deciding in favour of an objection of this kind would be, to afford a colour to returning officers to exclude any number of voters they might think proper, by the modes which they chose to adopt in entering their names in the poll-books, and thus to act in direct opposition both to the spirit and wording of the Reform Act; one of the main objects of which was to take away from them all power of excluding registered voters from the poll, except in the contingency of their declining to answer in the affirmative one of the three questions imposed by the 58th section. In the present case no question had been tendered, and the returning officer was not justified in refusing the vote which was tendered; and it was to be hoped the Committee would, rather than adopt his original error, confirm the subsequent retraction of it.

Mr. Hill abandoned his claim to be heard against the vote.

The Committee determined, "That it is the opinion of this Committee, that the vote of Horatio Beckham must be struck off the poll."

Mr. Kelly then abandoned the votes of all the persons included in the petitioner's class, No. 1.

Printed Minutes, p. 273.

The cases of Samuel Cook, sen., George Meadows Clarke, James Martin Howard, Frederick Hughes, William Keys, sen., John Wade, Thomas Wilkinson, jun., and Joseph Jobson.

Corporation officers employed at an election and paid out of public fund for their services, are not disqualified from voting.

The cases of these eight voters were taken together. They were all town servants in the employment of the corporation, six of them having been chosen by the bailiffs and two by the freemen at large, and they received salaries of £9 per year each, with the exception of two, who only received £5 or £6 a year. They were all employed in keeping the peace during the election, and were paid for their services by the treasurer out of a rate called the Marshalsea rate, which was levied on the town for the same purposes as a county rate. It was stated that this payment had been subsequently allowed by the magistrates at quarter sessions; an understanding, however, that such payments should not be repeated in future. It appeared in a previous part of the case, that two of these voters had also been employed to keep the door of the room at the White Hart, called the sitting members Committee-room.

Printed Minutes, p. 178.

After these facts had been proved the Committee intimated to Mr. Hill, that it appeared to them unnecessary to pursue the inquiry with reference to the eight votes now under consideration (except the two who were stated to be door-keepers), as it appeared to them that the voters were not disqualified from voting by reason of their being paid servants of the corporation, and there was no proof of any payment by the candidates.

Mr. Hill proposed to address the Committee in support of his objection to the votes in question.

Mr. Kelly submitted that Mr. Hill could not be heard.

The Committee intimated to Mr. Hill, that they were willing to hear further evidence on these votes, or any observations from him, if, notwithstanding the opinion expressed by the Committee, he still thought he could support his objection to the votes.

Mr. Hill, in opposition to the votes, urged similar arguments to those that had been made use of in the *Windsor case* (*l*), and cited *Wilcox's case* (*m*), and *Secker's case* (*n*). After he had concluded his argument, further evidence was adduced on the part of the sitting members, to prove that those persons received 2*s.* 6*d.* each for their attendance out of the Marshalsea fund, and that they also had always been paid for their attendance at quarter sessions, races, and elections of members of parliament.

Mr. Hill then admitted that he could not sustain his opposition to the first of the eight votes now under consideration, which were objected to on the ground of their being paid servants of the corporation at the election; but as to the remaining seven votes, he proposed to call witnesses to prove that they were disqualified, on the ground that they were paid by the candidates at the chairing of the sitting members.

Mr. Kelly contended that the whole of the eight voters were now under consideration, and that a decision must now be come to upon the whole; and he submitted, that as no such objection as that which Mr. Hill had now stated, was included in the list delivered on the part of the petitioners, it was not competent to Mr. Hill to call evidence in support of such objection.

After hearing Mr. Hill in answer to this objection, the Committee determined "That the votes of Frederick Hawes and James Martin Howard must be struck off the poll, but that the remaining six votes, viz. Samuel Cooke, sen., George Meadows Clarke, William Keys, sen., John Wade, Thomas Wilkinson, jun., and Joseph Jobson, are good votes, and must remain on the poll." They at the same time intimated, that they had decided the votes of Frederick Hawes and James Martin Howard were bad, upon the understanding that they were the two persons who were proved to have been door-keepers

(*l*) *Ante*, p. 185. (*m*) *Bedford case*, P. & K. p. 136.
(*n*) *New Windsor case*, *ante*, p. 185.

at the Committee-room of the candidates; but that it should be open to Mr. Kelly, at a future time, to correct any mistake as to the identity of the parties."

Edward Wade, Edward Cooper, and Benjamin Gordon Clover's case.

The receipt of parochial relief after the register has been out, is no disqualification of a voter.

All these persons had received parochial relief, both previous to the 31st of July, 1834, and between that time and the election. There was no proof of any of them having been objected to before the revising barrister. Their cases were argued together by Mr. Hill against, and Mr. Kelly in support of the validity of their votes. The arguments were similar to those used on the same points in the *Bedford* (*o*) and *Second Canterbury* (*p*) *cases*.

The Committee decided "That the votes of Edward Wade, Edward Cooper, and Benjamin Gordon Clover, were good votes, and ought to remain on the poll."

On the following morning, May 21st, the Committee came to a further resolution, "That where no objections have been made at the time of registration, the register to be held conclusive as to the right to vote, with the exception of cases provided for by the Reform Act, by resolutions of the House of Commons, and in the case of appointments to public offices subsequent to registration."

The cases of Alefounder and others.

Change of residence subsequent to registration no disqualification, unless the three questions put at the poll.

Mr. Hill inquired of the Committee whether it was intended, by the resolution to which they had come on the 21st, to prevent the petitioners from entering into the question of removal, unless the three questions pointed out by the Reform Act (*q*) were put to the voter at the time of polling.

The Committee resolved "That removal after regis-

(*o*) 1 P. & K. 136. (*p*) *Ante*, p. 131. (*q*) S. 58.

tration (the three questions not having been put at the time of polling), does not vitiate the vote."

It was admitted on the part of the petitioners, that the votes of Alefounder, and three others, fell within the last resolution, and that they must therefore remain on the poll as good votes.

Page's case.

Being employed in erecting the hustings, is not a disqualification to vote.

In this case the voter had polled for the sitting members, and it was sought to strike his vote from the poll, on the ground that he had been employed in erecting the hustings previous to the election. It was proved that he had been so employed by the direction of one of the returning officers, and that his bill had been duly paid to the returning officer by the candidates on both sides.

After hearing counsel on both sides, the Committee decided that the vote was good.

Brown's case.

Declaration of voter as to a bribe admissible, whether made before, during, or after the election.

In this case the voter was objected to by the petitioners, on the ground of bribery, and in the course of the investigation a question was put to the witness, who came to prove the declarations of the voter as to his being bribed, what was the purport of the certain conversations he had with the voter relative to a bill. The question having been objected to, and counsel heard on both sides,

The Committee resolved "That evidence of declarations of voters in the admission of bribery, whether before, during, or after the election, is admissible." The vote was ultimately struck off the poll.

Arthur Bott Cooke's case.

A voter who bribes another is disqualified.

Mr. Hill proposed to strike off this vote, on the ground of it having then already been proved that he had given a bribe.

Mr. Kelly contended that the giving a bribe would not vitiate the vote of the party giving it.

Mr. Hill having been heard in answer, and Mr. Kelly in reply,

The Committee resolved, "That Arthur Bott Cooke's vote be struck off the poll, on the ground of his having been guilty of bribing other voters."

John Edward Sparrow's case.

Whether the offer of a bribe, which is not accepted, invalidates the vote of the offerer.

This was the case of the town clerk, and principal agent of the sitting members, whose vote was attacked on the ground of his having offered work for the Blue School to a voter of the name of Watts, which had been deposed to by Watts, and contradicted by Sparrow, in the course of their previous examination on the case of bribery against the sitting members.

Mr. Hill against the vote, in addition to the general arguments on the facts, cited the *Coventry* and *Bridgewater cases*.

Mr. Kelly, in support of the vote, cited the *Barnstaple case*.

The Committee resolved "That J. C. Sparrow's vote was a good vote."

Mr. Austin requested to know whether the Committee had decided that the offer of a bribe did not disqualify the offerer.

The Chairman informed him, that the Committee had declined to come to a resolution on that point.

William Cooper's case.

An admission by a voter that he had been offered a bribe by one party, for which he subsequently voted, and an offer by him to vote for a similar bribe for

A witness, who had been a member of Morrison and Wason's committee, deposed that he had called upon the voter for the purpose of canvassing him on the second day of the election, that the voter had told him he had been offered £20 that morning for his vote by two gentlemen of the other party, but he would vote for Morrison and Wason, if they would do the same. The witness then stated that he then returned and informed his committee of this offer, and they declined to do any thing of the kind proposed on any account. He then returned, ac-

companied by another witness, (who corroborated him) to the voter, who told them that it would not be prudent for him to refuse the offer he had had, but repeated his inclination to vote for them if they would give him the same, as he was a reformer.

another party, held not sufficient to invalidate his vote.

Mr. Austin, against the vote,

Contended that it was clearly proved that the voter had asked for money to give his vote from one party, although he had not got it: according to his own confession he had agreed and contracted with the other party to give his vote for money. Both these acts are specifically enumerated in the 7th section of the Bribery Act as constituting the offence which that statute was passed to prevent, and without therefore calling upon the Committee to draw the unavoidable inference that the man received the sum from the party with whom he had owned he had bargained for it, his vote must be held to have been given under the influence of corruption, and must be struck off the poll.

The Committee decided "That William Cooper's vote was a good one."

George Baxter's case.

This voter was objected to on the ground of bribery. In order to prove the case, one of the sureties of the petitioners was called. An objection was taken to his admissibility as a witness by Mr. Kelly, and answered by Mr. Austin. The Committee decided that the witness could not be examined, and afterwards, on no further evidence being produced against the vote, "That the vote of George Baxter was good."

A surety of the petitioners is not admissible as a witness.

Thomas Goodherham's case.

Mr. Wason objected to this vote, on the ground of the voter having been engaged as a page at the election.

It appeared by the evidence, that the voter and some others were engaged, after they had polled, to assist as pages at the chairing of the successful candidates, and

that they received seven shillings a piece for such service, but it also appeared that, prior to their voting, there was no stipulation that the voter and his companions should be employed in the chairing.

The Committee resolved "That Thomas Goodherham's vote was good."

This was the last case of scrutiny. On the next day Pilgrim was produced, and the case determined without the scrutiny being further proceeded with.

CASE XVII.

CORK COUNTY.

The Committee was ballotted for on the 26th of May, 1835, and consisted of the following Gentlemen:—

John Barneby, Esq. M.P. for Droitwich, (*Chairman.*)

John Fergus, Esq. M.P. for Dysart.	Wyndham Lewis, Esq. M.P. for Maidstone.
Major M'Namara, M.P. for Clare County.	John Maher, Esq. M.P. for Wexford.
T. C. Whitmore, Esq. M.P. for Bridgenorth.	Hon. R. B. Wilbraham, M.P. for South Lancashire.
Sir Hugh Purvis Hume Campbell, M.P. for Berwick.	Thomas Houldsworth, Esq. M.P. for Nottinghamshire.
O'Connor Don, M.P. for Roscommon County.	John Parker, Esq. M.P. for Sheffield.

Petitioner:—Richard Longfield, Esq.
Sitting Member:—Feargus O'Connor, Esq.
Counsel for the Petitioner:—Mr. Harrison and Mr. Thesiger.
Agents:—Messrs. Yates and Turner.
Counsel for the Sitting Member:—Mr. Serjeant Merewether, Mr. Austin, and Mr. Chambers.
Agents:—Messrs. Fladgate, Young, and Jackson.

THIS case turned on the want of qualification of the sitting member. At the close of the poll the numbers were as follows; for the sitting member 1630, for Mr. Garrett Standish Barry (against whom the petition had been abandoned) 1613, for Mr. Longfield (the petitioner)

Where notice of disqualification has been given at the poll, the Committee will seat the

unsuccessful candidate, on disqualification being proved.

1027, and for Lord Viscount Bernard 984. It appeared by the evidence, that Mr. O'Connor's qualification was demanded, and he swore to one which he described to consist of certain lands and tenements situated in a certain township in the counties of Cork and Limerick. In consequence of some further discussion, another qualification was delivered in by Mr. O'Connor, describing it to be in respect of lands, &c. situate in the baronies of East and West Muskerry and Carberry, and within the precincts of the county of the city of Cork, and also in respect of other lands in the county of Limerick. The difference between these statements excited some attention; and, in consequence of the variance, one of the friends of Mr. Longfield made a distinct requisition to the returning officer, pursuant to the statute of Anne, that the first statement of qualification should be reduced into writing, and verified upon oath by Mr. O'Connor. This the returning officer refused, but certified that all the candidates had, on the first day of the election, duly taken the oath of qualification now required by him to be taken by every candidate for the representation of counties; and further certified, that the oaths had been administered by him, the returning officer. This certificate, without setting forth in what respect the candidates were qualified, wholly omitted both the qualification verbally stated in the first instance by Mr. O'Connor, and that subsequently and specifically delivered in by him afterwards. In consequence of this refusal, and the want of information in the certificate of the returning officer, a protest was delivered to the assessor of the high-sheriff against the return both of Mr. Standish Barry and Mr. O'Connor, on the ground of want of qualification.

Notices of Mr. O'Connor's want of qualification were given to more than 700 voters in his interest, both before and during the election, and notice to the above effect was also publicly circulated throughout the town;

and although it appeared that these notices were in the English language, and were not explained to the electors, (many of whom could not read English,) yet it was proved that they all knew the meaning of them.

On taking his seat, Mr. O'Connor delivered at the table of the House of Commons a qualification, consisting of lands, &c., situate in the parishes of Ahabolloge, Kilmurrey, St. Ann, Shandon, &c., in the counties of Cork and Limerick. This statement differed wholly from those which had been previously made. On the petition having been presented, Mr. O'Connor, pursuant to the standing order of the House of Commons (*a*) of 1717, delivered in a particular of his qualification, by which he described it as consisting of a rent-charge of 500*l.* a year, charged upon certain lands in the barony of East Muskerry, the north suburbs of the city of Cork, and the parish of Ahabolloge in the county of Cork, granted to him by one Robert Hasnett, by a certain indenture bearing date the 10th of January, 1835, in consideration of the sum of 5000*l.*, paid and secured as mentioned in the deed.

Also of a freehold estate within the liberties of the city of Limerick, of the annual value of 350*l.*, subject to

(*a*) 21 Nov. 1717. 1. "That notwithstanding the oath taken by any candidate, at or after any election, his qualification may afterwards be examined into.

2. "That the person whose qualification is expressly objected to in any petition relating to his election, shall, within fifteen days after the petition received, give to the clerk of the House of Commons a paper, signed by himself, containing a rental or particular of the lands, tenements, and hereditaments, whereof he makes out his qualification, of which any person concerned may have a copy.

3. "That of such lands, tenements, and hereditaments, whereby the party hath not been in possession for three years before the election, he shall also insert in the same paper, from what person, and by what conveyance or act in law he claims and derives the same; and also the consideration, if any paid; and the names and places of abode of the witnesses to such conveyance and payment."

an annuity of 120*l.*, leaving a clear yearly rental of 230*l.* above reprizes.

Also a rent-charge of 24*l.* a year, payable by the representatives of the late Robert Longfield Connor, and charged upon a freehold estate situate in the parishes of Christ Church, St. Paul's, Fanlobus, and other parishes in the county of Cork, which last-mentioned freehold estate and rent-charge had been in the possession of the sitting member for more than three years before the last election for the county.

It appeared, that part of the property on which the rent-charge of 500*l.* a year was secured, was held by Mr. Harnett by a lease for lives, renewable for ever, at a yearly rent of 250*l.*, and that the life of Mr. Feargus O'Connor was not one of those lives; that other part of such property was held by Mr. Harnett for three lives only, without any right of renewal; and that the remaining portion of it was leased by Mr. Harnett for three lives, renewable for ever, leaving him a reversionary interest only in it. The deed stated, that 3000*l.*, part of the consideration-money for the annuity, was to be paid in cash, and that the residue (2000*l.*) should be satisfied by the sale of timber standing upon certain lands called Fort Robert, in the possession of the sitting member, and of his reversionary interest in the said lands.

The evidence given by the witnesses in support of the petition, rendered it very doubtful whether it was not clear that the qualification of the sitting member was insufficient in point of annual value.

Proof of the poll.

Poll-books left by a poll-clerk in a pantry to which others of the family

It appeared that the poll-books were not verified by affidavit in the mode pointed out by the 4th Geo. IV. c. 11, s. 76, and it therefore became necessary to give common law proof of their authenticity.

Mr. Bond, the deputy clerk of the peace for the

county of Cork, produced the poll-books, twenty-two in number: six of them he received from the under-sheriff, and the others from the different poll-clerks. They had been in his possession ever since, and no alteration or erasure had been made in them while in his custody; and whenever any party inspected them it was always in Mr. Bond's presence. As to all the poll-books but three of the baronies of Orrery and Imskilly, and the baronies of East and West Carberry, there was no doubt of their having been in the proper custody.

had access, admitted on proof that there had been no alteration, although the other members of his family were not examined.

As to the books of the baronies of Orrery and Imskilly, the poll-clerk stated that he took them on the Saturday, the day the election closed, to the clerk of the peace, who pointed out that he, the witness, must get them signed by the deputy-sheriff. The witness, instead of taking the books immediately to the deputy-sheriff, took them home, and deposited them in a pantry in his mother's house, where they remained until the Monday, when he got them signed, and gave them to the clerk of the peace. The pantry in which the books were left was not locked, and several persons in the family had access to it, and the witness was absent at church and otherwise for several hours on the Sunday, but he also stated that he made no alterations in them, and that none had been made.

With regard to the poll-books for the baronies of East and West Carberry, the poll-clerk proved, that immediately after the election he delivered the poll-books to a person in the sheriff's office whom he did not know, and whom he should not know were he to see him again; that the office was an open one, and that persons were continually coming in and out on business; but he stated that he had examined the books very carefully since his arrival in London, and that he was certain that they had not been altered since they left his hands.

Mr. Serjt. Merewether, on the part of the sitting member, objected to the poll-books being received.

The petitioner not having availed himself of the assistance of the statute, which enables him to prove the poll-books by the proper affidavits, is undoubtedly entitled to offer substituted evidence of their authenticity; but it is impossible that the Committee, on the evidence now offered, can, consistently with the decided cases on the subject, come to any other decision than that the poll-books must be rejected. The absence of the statutory proof renders the strictest possible account of their custody necessary; here the poll-books for Orrery and Imskilly have been kept in a most careless manner; the clerk, instead of getting the books signed by the deputy-sheriff, immediately after the close of the election, takes them to his own house, exposes them in an open cupboard to which any one might have had access, leaves the house on the Sunday for many hours, and then, on the Monday, trusting to Providence that there had been no alteration made in them in his absence, takes them to the deputy-sheriff, gets them signed, and then delivers them into the hands of the clerk of the peace. Next, as to the East and West Muskerry books, how do these stand? Why, the clerk gives them to a person of whom he knew nothing; a person who, for any thing he knew, might be an adherent of the opposite party,—a person whom he states he should not know were he to see him again, and who, for any thing he may be able to say, may have altered the poll-books previously to their being handed over to the clerk of the peace. It is true, that both these clerks state that there has been no alteration in their respective poll-books. Without meaning to impugn their veracity, how can they swear that? Many months have elapsed since they parted with the custody of them. They gave them up in January, they don't see them again till May, and unless they had the poll off by heart, blanks and all, it is

utterly impossible that they can safely speak to their being genuine. The very time that any alterations would be made precludes the supposition that they would be able to detect them; the ink can afford no indication whereby to detect the fraud, as the alterations would be made so near the time of the poll being taken, that the slight difference of time between the true and false entries, or erasures being made, would give no evidence by the difference of the colour of the ink. The objection now taken is not a technical one, Committee after Committee have repeatedly rejected poll-books under circumstances far less suspicious. In the *Oxford case* (*b*) it appeared, that the poll-books had been kept in a desk by a clerk of the mayor, of which the clerk had the key, and which was not delivered to the mayor, and they were refused in evidence on the ground that they had not been kept with due and sufficient care. In the *Londonderry case* (*c*) the same doctrine prevailed. In the *Roscommon case* (*d*) they had been kept at the top of an open press in the office of the deputy-clerk of the peace, and the Committee refused to receive them in evidence. From the principle of these cases, as well as from the common sense of the thing, these books cannot be received in evidence.

Mr. Thesiger, for the petitioner.

If the objection made on the other side is to have any weight with the Committee, they must in substance declare that they will place the electors of Ireland under the control of the sub-sheriffs and the deputy-clerks of the peace; and it would be dangerous to allow an objection like this (which is always made in Irish cases) to form a precedent for future Committees. The decision of the *Roscommon* Committee has been a subject of great regret with the profession, and will not be held a binding authority. In that case, the clerk of the peace

(*b*) P. & K. 96. (*c*) P. & K. 272. (*d*) *Ante*, 259.

produced the poll-books, which, he stated, had been given after the numbers had been declared at the close of the poll by the sheriff to the under-sheriff; that he was present at the time, and that he walked with the under-sheriff to his own office, where the under-sheriff delivered the books to him. He stated, also, that he saw the high-sheriff, directly after the numbers on the poll were declared, with the Testament in his hand, but that he did not hear him take any oath to verify the poll; he, however, subsequently identified a memorandum in one of the poll-books, in the handwriting of the assessor, that the sheriff had sworn to the effect required by the act of 1 Geo. IV. c. 11, before a magistrate for the county. With regard to the other part of the case, the custody of the poll-books by the deputy-clerk of the peace, the deputy stated, that after he had received them, he had kept them at the top of an open press, in a room of which he had the key; that he had no clerk, and that no one had access to his office except when he was there; that after he had received the Speaker's warrant, he had taken those books from the press and kept them separate from his other papers, but that he had permitted the agents on both sides, in whom he had perfect confidence, to copy them in his office, part of which time he had gone away and left the poll-books in their respective custody. Now, having stated the circumstances of the case thus fully, the Committee must see that it is almost impossible to imagine the grounds on which the Committee in that case came to the conclusion they did; the handwriting of the certificate indorsed on the poll-books by the assessor was proved, and the poll-books having been in the hands of the agents on both sides, the presumption as to the alteration was even between the parties; it therefore follows, that it must be considered a case *sui generis*, and not a precedent which is to guide future Committees. The *Ennis* Committee, in the present session, came to a

different decision, and admitted the poll-books, under circumstances which had somewhat of suspicion attached to them. In passing the statute of 1 Geo. IV., the legislature had in view the lessening of expense to the candidates, it therefore by that statute interposed, and said that the production of the poll-books from the proper custody, shall be conclusive evidence of their authenticity. If the course pointed out by the statute be not followed, clear evidence of them must be given. In this case, the evidence can leave no doubt of their having been free from all alteration. The facts of the *Londonderry case* (*e*) do not bear upon the present. In that case the indorsement, purporting to be the certificate of the returning officer, was made by a clerk, and it needs no magic to see that the signature of a clerk can not be deemed the signature of the returning officer. In the *Galway County case* (*f*), the affidavit of the returning officer, although not annexed to the poll-books, and although the poll was not summed up, was deemed sufficient evidence of their authenticity. In the *Oxford case*, the books had been in the hands of a clerk named Jacobs, who was not called; that case, therefore, is not applicable to the present; time, however, was given to produce Jacobs, on whose evidence the book was admitted. In the *Clonmel case* (*g*), the formalities of the statute had not been complied with, yet, on it being proved that there had been no alteration in the books, they were admitted. If the *Roscommon case* is to be the guide of the Committee, nothing can be easier than for any sitting member, however unduly elected, to secure his seat. All he has to do is to send his agent, under the Speaker's warrant, to examine the poll-books, and while the examination is proceeding, another agent, as if by accident, calls the clerk of the peace out of the room on some professedly urgent

(*e*) *Ante.* (*f*) P. & K. 511. (*g*) P. & K. 425.

business: the inference then will be, that the poll-books have been altered, and the sitting member may set his antagonist at defiance.

Mr. Serjt. Merewether, in reply.

The cases relied on by the other side are distinguishable from this, and the cases first cited must lead the Committee to the conclusion that the objection taken is well-founded. The other side argue on the expediency of the thing in not giving too much power to the returning officer. If the law requires certain acts to be done, they must be strictly adhered to; if exceptions are allowed, the rule would be abandoned. The petitioner in this case has no right to complain; he objected to and gave notice of Mr. O'Connor's disqualification, and yet took no care to have the petition regularly conducted. The statute is an imperative act. It lays down a particular line of conduct to be pursued if the party wishes to avoid giving that strict proof which was formerly required. These requisitions not having been complied with, substituted proof is offered; and to justify the Committee in receiving it, not a single hour, where the poll-books have not all along been in the custody of the proper officer, should be unaccounted for. The law gives credence to certain public officers that all that is proper to be done has been done. Coming out of the proper custody, nothing is to be inferred against it. The records in public offices are incontrovertible evidence, although they be the records of ten thousand votes. Here they do not come out of the proper custody, and hence the distinction between the cases cited on the other side and the present. In the *Clonmel case*(*h*) the books were authenticated by oath, and not a single moment was unaccounted for. In the *Galway case* (*i*) the oath had been taken, but no affidavit made. The statute only requires an oath

(*h*) *Ante*, p. 399. (*i*) *Ante*, p. 399.

to be taken, although the practice in Ireland certainly is to make an affidavit. The comments on the *Roscommon case* are, to say the least of them, extraordinary. In arguing the point before that Committee, one of the members said, "The question, Mr. Thesiger (*k*), is not whether alterations have been made, but, have the books been left in a situation where they may have been altered?" which shows what the opinion of that Committee was on this subject. The *Ennis case* did not overrule the *Roscommon case*, the circumstances of the two cases were wholly different. In the *Oxford case* the books came out of the proper custody, but it was not until they had been authenticated by the evidence of Jacobs that the Committee resolved to admit them in evidence. Here there is a period of near two days wholly unaccounted for; the petitioner must have known, that the first thing he would be called upon to do before going into this case, would be to prove the poll; he must have known before-hand all that the witnesses have disclosed, and it was his bounden duty to have brought over the whole of the members of the family of the witness who had the custody of the Orrery and Imskilly poll-books, to prove that there was no alteration of them while they were exposed in the pantry, to which every one of them had access.

The Committee resolved that the poll-books should be received in evidence.

Mr. Harrison and Mr. Thesiger for the petitioners.

By the 9th Ann. c. 5, s. 1, it is enacted, "That from and after the determination of this present Parliament, no person shall be capable to sit or vote as a Member of the House of Commons for any county, city, borough, or cinque port, within that part of Great Britain called England, the dominion of Wales, and town of Berwick-upon-Tweed, who shall not have an estate,

(*k*) Mr. Thesiger was counsel for the petitioner.

freehold or copyhold, for his own life, or for some greater estate, either in law or equity, to and for his own use and benefit, of or in lands, tenements, or hereditaments, over and above what will satisfy and clear all incumbrances that may affect the same, lying or being within that part of Great Britain called England, the dominion of Wales, and town of Berwick-upon-Tweed, of the respective annual value hereafter limited, viz., the annual value of 600*l.* above reprizes for every knight of a shire, and the annual value of 300*l.* above reprizes for every citizen, burgess, or baron of the cinque ports; and that if any person who shall be elected or returned to serve in any Parliament as a knight of the shire, or as a citizen, burgess, or baron of the cinque ports, shall not, at the time of such election and return, *be seised of or entitled to such an estate* in lands, tenements and hereditaments, as for such knight, or for such citizen, burgess, or baron respectively, is hereinbefore required or limited, such election and return shall be void." The next section makes exceptions to the foregoing clauses in the cases of the eldest sons of peers, or of persons qualified to serve as knights of the shire. This act referred only to the English counties, and was passed for the purpose of excluding courtiers, military men, and merchants, from Parliament; but after the celebrated *Leominster case* (*l*), in which Sir William Fairlie was unseated, its provisions were extended to Scotland and Ireland. Now the principal part of the property, by virtue of which Mr. O'Connor claims to hold his seat, being the rent-charge granted by Mr. Harnett, and Mr. Harnett holding the property, out of which the rent-charge is derived, under a lease for three lives, it follows that he could not give Mr. O'Connor an estate in the rent-charge which, in point of law, amounts to an estate for Mr. O'Connor's own life. That an estate for the lives of others, however numerous, is not equal to an

(*l*) Corbet & Daniel, 1.

estate for a man's own life, is proved by the authority of Lord Coke (*m*), where he lays down the doctrine as here propounded, and is too indisputable a proposition to be now questioned. This being so, the grantor of the annuity could not grant it for longer than the three lives under which he held; consequently he could not grant a rent-charge for Mr. O'Connor's own life, because that would be for a higher estate in the eye of the law than the estate of the grantor himself. It may be said on the other side, that though Mr. Harnett's lease was only for three lives, yet it was renewable for ever, on payment of certain fines, and therefore was equal to a fee-simple; but this only applies to part of the property. The tenure for lives was peculiar to Ireland, and indeed one-seventh of the whole lands of that country are held in that way, and consequently it was not surprising that numerous decisions had been made on that subject. But it never has been held (even since the Tenantry Act) that if the tenant has been guilty of gross laches, and on demand has refused to renew on payment of the stipulated fines, he can, at all events, compel a renewal, and unless he can do that, he cannot be said to have an equitable perpetuity, or an estate in fee-simple. In *Murray* v. *Bateman* (*n*), the House of Lords, in England, reversed a decision of Lord Lifford, and refused to compel the landlord to renew. The practice of Courts of Equity in Ireland having been to allow renewals where no very great laches had occurred, this decision of the House of Lords, which went to overturn what was called the ancient equity of Ireland, gave great alarm to the holders of this sort of property, and led to the passing of the 19th and 20th of Geo. III. c. 3, commonly called the Tenantry Act. That statute, which was a declaratory act, and therefore showing what was the law before it passed, restored to Ireland the old equity, as it existed before Lord Lif-

(*m*) Co. Litt. 42 *a*. (*n*) 5 Bro. P. C. 20.

ford's decree in the cases cited, but giving to the tenants the claim to demand renewals as a matter of right, within certain periods after the dropping of the last life, but leaving the renewal in the discretion of the judge presiding in equity, to decide upon the laches or otherwise of the party claiming the interference of the Court. By this statute it is enacted, " that Courts of Equity, upon an adequate compensation being made, shall relieve such tenants and their assigns against such lapse of time, if no circumstance of fraud be proved against such tenants and their assigns, unless it shall be proved to the satisfaction of such Courts that the landlords or lessors, or persons entitled to receive such fines, had demanded such fines from such tenants or their assigns, and that the same had been refused or neglected to be paid within a reasonable time after such demand; and if a landlord cannot discover his tenant, notice for two months, in the London and Dublin Gazettes, is to be considered a demand within this Act." Various instances have occurred since the passing of the act, in which renewals have been refused by the Court. The cases of *Jackson* v. *Sanders* (*o*), *Magrath* v. *Lord Muskerry* (*p*), *Jessop* v. *King* (*q*), and *Lord Mountnorris* v. *White* (*r*), fully illustrate this point. In *Jackson* v. *Sanders*, the tenant had two years intimation that the payment of the fines was expected, and having neglected to pay them, the Court refused to decree a renewal. In *Magrath* v. *Lord Muskerry*, the tenant had let all three lives drop before he applied for a renewal. In *Jessop* v. *King*, although a renewal was decreed, under the circumstances, the Lord Chancellor said, that if there be fraud, or a demand and neglect to renew in reasonable time, the covenant is forfeited. In *Lord Mountnorris* v. *White*, there had been repeated demands on the part of the landlord to renew, particularly in the years 1788 and 1796, and no offer was made

(*o*) 2 Dow. P. C. 437.
(*p*) 1 Ridgw. P. C. 469.
(*q*) Ball. & B. 81.
(*r*) 2 Dow. P. C. 461.

on the part of the tenant until the year 1804, and on an appeal to the House of Lords in England, the decree of the Court of Exchequer in Ireland was reversed, and the tenant's right to renew disallowed. These four cases will amply prove to the Committee that no certainty existed of a renewal where there has been fraud, laches, negligence, or refusal, on the part of the tenant, after the last life has dropped; and furnish a complete answer to any suggestion that the other side may make, that a lease for lives, renewable for ever, is equivalent to an estate in fee-simple. The rent-charge, therefore, upon which Mr. O'Connor mainly relies, is insufficient, inasmuch as it grows out of an estate insufficient to be charged with it. As soon as the lives drop the estate immediately determines, and the very circumstance of having to apply for a renewal shows the precariousness of the tenure. The lives may drop to-morrow: who can tell whether Mr. Harnett will renew? It is not imperative on the tenant so to do, it is only so on the landlord if the tenant chooses to demand a renewal. Then if Mr. Harnett does not choose to make the demand, what becomes of the fee? Where is it? It does not, it cannot exist, for so often as he renews, there is a reversion always left behind. The next portion of the qualification, the lands, comprised under the general denomination of Dengoor, out of which the rentcharge issued, being only held for three lives, the question of renewal could not arise, for they were avowedly held for three lives only. As to that part of the lands called the Red Cellar Lot, as they have been leased by Mr. Harnett for three lives, it was impossible he could grant a rent-charge out of the freehold of another, and therefore no question could arise on this point.

After commenting on the value of the premises, which the learned counsel contended were not of the clear yearly value to Mr. O'Connor of 600*l.* a year, he ad-

dressed himself to the question of the notices of Mr. O'Connor's want of qualification.

Having shown that Mr. O'Connor has not a qualification in point of law, even were the estates out of which he endeavours to make that out sufficient in point of value, and having shown that the evidence indisputably proves that he has not a sufficient estate in point of value, we now claim the seat for Mr. Longfield on the ground that sufficient notice of the disqualification was given to the electors, and that the votes given for the sitting member have been thrown away. The authorities on this point are all collected in the last edition of *Rogers on Elections*, p. 209, and the principle made out by those authorities is, that where a party was disqualified at common law or under the provisions of the statute of Anne, on notice being given to the electors at the time of polling of such party's ineligibility, the votes polled after such notice are thrown away. There are also authorities in the courts of common law in reference to elections for corporate offices, in which the same principle prevails; *Claridge* v. *Evelyn*(*s*), *Rex* v. *Parry and Phillips* (*t*), *Rex* v. *Bridge* (*u*). The parliamentary decisions are analogous to them. In the *Fife case* (*x*), General Skene was disqualified as being a baggage-master, and the Committee seated Mr. Henderson, on the ground that his holding the office was notorious to the electors. In the *Second Southwark case* (*y*), notice was given of the resolution of the former Committee, by which they unseated Mr. Thelluson, and upon his being re-elected, he was declared ineligible, and his opponent seated in his stead. The *Leominster case* (*z*), the *Cockermouth case* (*a*), and the *First Leominster case* (*b*), are all instances where the same doctrine prevailed. On all these authorities then we are entitled

(*s*) 3 B. & A. 81. (*t*) 14 East, 549. (*u*) 1 M. & S. 76.
(*x*) 1 Lud. 455. (*y*) Clifford, 130. (*z*) Rogers, 264.
(*a*) 18 Journals, 673. (*b*) Corb. & Dan. 1.

to claim the seat for Mr. Longfield; the disqualification of Mr. O'Connor was matter of notoriety; the speeches of the sitting member himself, at the election, were notice, independently of those that we have given; the precedents are all in our favour, and the Committee will therefore have no difficulty in deciding that Mr. Longfield ought to have been returned.

Mr. Serjeant Merewether, for the sitting member, contended, that as this tenure was peculiar to Ireland, and as one-seventh of the whole lands in the country were held by it, it would be hard to put such a construction of the statute of Anne, which had only been lately extended to that country by the 41 Geo. III. c. 101, which would have the effect of disqualifying those who had heretofore considered their estates as equitable fees; that the Tenantry Act was passed for the purposes of securing the tenants in their hold; and as the covenants were for perpetual renewal, the tenant had, to all intents and purposes, an equitable fee. After commenting on the evidence which was offered on the insufficiency of value, the learned serjeant contended that the notices given at the election were insufficient to entitle the petitioner to the seat, inasmuch as not one tenth part of the voters understood the language in which they were written.

The Committee resolved:—

"That Fergus O'Connor, Esq. was not duly elected a knight to serve in the present Parliament for the county of Cork.

"That Richard Longfield, Esq. was duly elected and ought to have been returned a knight to serve in this present Parliament for the said county of Cork.

"That neither the petition nor the opposition to it were frivolous or vexatious."

In the *Shaftesbury case* (Journals of the House of Commons, vol. xviii. p. 69, anno 1715,) the qualification of one of the petitioners was objected to, and there being a variance between the particular of the qualification set forth in the certificate made by the returning officer under the 9 Ann. c. 5, and that delivered to the clerk of the House, a motion was made "That William Benson, Esq., one of the petitioners, complaining of an undue election for the borough of Shaftesbury, in the county of Dorset, having, at the demand of the sitting members, delivered in a particular of lands, tenements, or hereditaments, in order to make out his qualification to be elected for the said borough, pursuant to the order of the House of the 23d day of March last, the counsel for the sitting members, if they have any objection to the said William Benson's qualification, be directed to make their objection to the said particular delivered in pursuant to the said order of the House." And an amendment being proposed to be made, by adding, at the end of the question, these words, *viz.* "so far only as the same relates to lands, tenements, and hereditaments, in the parish of Bromley, in the county of Middlesex, being the only qualification the said William Benson gave in, upon oath, at the said election, as appears by the certificate of the mayor of the said borough;" the House divided upon the question, "that the said words be added to the question," and the yeas were 136, and the noes 126. The party was, therefore, confined to the particular of his qualification mentioned in the certificate of the returning officer. But see as well p. 393, *ante*, as the *Dover case*, Perry & Knapp, p. 418.

CASE XVIII.

BOROUGH OF MONMOUTH.

The Committee was appointed upon the 2d of June, 1835, and consisted of the following Members:—

Edward Strutt, Esq. M. P. for Derby,
(Chairman.)

Hon. Henry Robert Westenra, M.P. for the County of Monaghan.
Thomas Noon Talfourd, Esq. M.P. for Reading.
William Pinny, Esq. M.P. for Lyme.
Hon. William Gordon, M.P. for Aberdeenshire.
Sir Richard Musgrave, Bart. M.P. for Waterford.
Henry Charles Sturt, Esq. M.P. for Dorsetshire.
John Payne Elwes, Esq. M.P. for Essex.
Richard Montesquieu Bellew, Esq. M.P. for the County of Louth.
William Blamire, Esq. M.P. for Cumberland.
Thomas Chaplin, Esq. M.P. for Stamford.

Petitioners:—Joseph Bailey, Esq. and Electors in the interest of Joseph Bailey, Esq.
Counsel for the Petitioners:—Mr. Serjeant Merewether, Mr. Serjeant Ludlow, and Mr. Rogers.
Agents:—Messrs. Jennings and Bolton, London; and Messrs. Powles and Tyler, Monmouth.
Sitting Member:—Benjamin Hall, Esq. of Lanover.
Counsel for the Sitting Member:—Mr. Harrison, K.C. Mr. Maule, K.C. and Mr. Phillips.
Agents:—Messrs. Dorrington and Jones.

THE first petition read was from Joseph Bailey, Esq., setting forth that various unqualified persons had been permitted to vote at the last election of the borough of Monmouth, whereby Benjamin Hall, Esq. had obtained

a colourable majority, and prayed that the petitioner might be declared to have been duly elected, and ought to have been returned to serve in parliament for the said borough, or that the House should afford to the petitioners such further and other relief as to the House should seem fit.

The second petition was from Robert Bevan, of Monmouth, Doctor of Physic, Richard Amphlett, of the same town, Esq., and Edward Lucas, of the same town, Esq., electors of the borough of Monmouth, who had a right of voting at the last election for the said borough, and did in fact vote thereat. It contained the same allegations as the other petition, and prayed for the same relief.

Proof of the poll-books of the returning officer of Monmouth sufficient, without the evidence of the officers before whom the poll of the contributory boroughs of Newport and Usk was taken.

The poll-books were produced by the returning officer of the borough of Monmouth, and consisted of the poll-book of the borough of Monmouth, and also of the poll-books of the contributory boroughs of Usk and Newport. The Mayor of Newport had himself delivered to the Mayor of Monmouth the books in his charge, but the books from Usk were sent in a sealed cover, unaccompanied with any note or letter, to the Mayor of Monmouth, and directed in hand-writing which was unknown to him. The Portreeve of Usk, by whom the poll in that borough was taken, was present at the declaration of the poll, and saw the seal upon the poll-book from Usk publicly broken, when the number of electors polled was about to be counted up.

Mr. Harrison and Mr. Maule contended, that the poll-books of Usk and Newport ought to be identified as the original books, and to be proved by the evidence of the Portreeve of Usk and of the Mayor of Newport.

Mr. Serjeant Merewether was heard in reply, and the Committee decided that the poll-books were sufficiently proved.

The Mayor of Monmouth then produced the register of electors of the borough.

The early cases of the scrutiny were simply respecting

change of qualification between the time of registration and of polling.

Thomas Palmer's case.

Mr. Serjeant Merewether contended, that the objection to this voter, upon the ground of change of qualification since the time of his registration, could not be entertained, the third question of the Reform Act—"Have you the same qualification for which your name was originally inserted in the register of voters now in force for the borough of Monmouth, &c."—not having been proved to have been put to the voter at the time of polling.

Want of proof of the questions being put to the voter, will not prevent his being objected to.

Mr. Harrison was heard in reply, and the Committee resolved, that it was not necessary to prove the putting of the question (*a*).

Morgan Morgan's case.

This voter was numbered in the Newport poll-book 438, but it was not stated in the exchanged list what was his number upon the register, there being two Morgan Morgans having houses in the same street. Upon this account Mr. Serjeant Merewether contended, that the voter was not objected to in such a manner as to enable it to be known which Morgan Morgan was objected to.

The number of the voter upon the register, not given in the exchanged list, though two persons of the name lived in the same street, held not to prevent the consideration of the vote.

Counsel was heard in reply, and the Committee resolved, that a correct statement of the Christian and surname of the voter, without further description, would entitle the objector to proceed; but that if, in any case, it should be shown that real ambiguity had arisen from the want of further description, they would afford the party supporting the vote such indulgence as they might deem expedient (*b*).

Ambiguity in the reference to a voter objected to, will entitle party supporting the vote to indulgence.

(*a*) See *Barker's case, ante*, 325, and pp. 72, 326, 386.

(*b*) See *Horan's case*, P. & K. 521; and 9 Geo. IV. c. 22, s. 14, *infra*, 426.

Colonel William Pearce's case.

The Committee will require the nature of the objection to a vote to be proved by some witness, who was examined by the revising barrister, or had notice to attend, or did not attend, or by some witness who was tendered before the revising barrister, and rejected by him, before they will receive other evidence.

Mr. Serjeant Merewether contended, that before the objection made to this voter, upon the ground of insufficiency in the period of his residence, was entered into, it ought to be shown that the objection was made before the revising barrister, and that his decision was founded upon the objection.

It was then proved that Colonel Pearce was objected to upon the ground mentioned, and another witness was then called to prove the objection.

Mr. Serjeant Ludlow contended against any witness being called, who was not examined before the revising barrister. Mr. Harrison replied, and the Committee resolved, "that the evidence be confined to those witnesses that were examined before the revising barrister, except such witnesses as shall have had notice to attend before the revising barrister, and did not attend, or such witnesses as were tendered before the revising barrister, and were rejected by him (*c*)."

Mr. Harrison then applied to have the consideration of the vote deferred until he should be able to produce witnesses, who were examined before the revising barrister.

Application for delay granted.

Mr. Rogers opposed the application; but the Committee granted it.

A case that followed was that of Thomas Richard Wells, who was objected to upon the ground of non-payment of rates; and a witness was called, the hearing of whose evidence was opposed by Mr. Harrison, upon account of the resolution in Colonel Pearce's case.

The Committee, after hearing counsel, resolved, "That this Committee, before hearing any objection in the nature of an appeal, from the decision of the revising bar-

(*c*) See *Rochester case, ante*, 82, and the arguments upon *Samuel Wyld's case*, 75; *Clonmel case*, P. & K. 429; *Monaghan case, ante*, 32; and the *Carlow County case, infra*.

rister, will require the ground of the objection *bonâ fide* made and insisted on to be proved, and the evidence confined to those grounds; but that they will not restrict the evidence of either party to that before the revising barrister (*d*)."

When the case of Colonel Pearce was again brought on, further evidence was given of what passed before the revising barrister, and Mrs. E. Pearce, the mother of Colonel Pearce, who was not examined before the revising barrister, was then called. Mr. Serjeant Merewether objected to her being examined, when the Committee decided that their resolution "had been sufficiently met," and that Mr. Maule might proceed with the case.

Edmund Llewellyn's case.

After a vote is recorded, the returning officer not permitted to alter the poll, the vote having been distinctly given for the candidate in whose favour it was recorded.

The voter came to the poll upon the first day, wearing the colours of Mr. Hall. When asked for whom he voted, he said distinctly "Bailey," and added, "he is a real gentleman." Some surprise appears to have been excited, and the voter being evidently drunk, the mayor was asked to put the question again. The counsel attending for Mr. Bailey objected to the question being again asked, the vote being recorded. The mayor recommended that the voter should be brought up again the next morning, Mr. Bayley's counsel protesting against such an arrangement. Upon the next day the man came up and said, that he did not know, upon the previous day, on account of being intoxicated, for whom he voted, and that he desired to vote for Hall. The mayor, whose conduct during the election was commended by witnesses of adverse politics, altered the poll, and recorded the vote in favour of Mr. Hall.

(*d*) The terms of this resolution are obscure; but they may mean that the evidence should first be confined to the nature of the objection *bonâ fide* made before the revising barrister, and that when that is proved, other evidence than that heard by the revising barrister may be given. See *Michael Byrne's case*, in *Carlo County case, infra*.

The Committee removed the vote from the poll in favour of the sitting member, and added it to that of the petitioner.

Thomas Webster's case.

Misdescription in the register of the locality of the qualification not held to prevent the voter being polled.

The overseer, in making out the list of voters, had properly described the qualification of this voter to be at Stowe, in the parish of St. Woolds, but by some error of the printer it was described in the list signed by the revising barrister to be at Pittgwenly, in the same parish. When the voter came to the poll, the third question in the 58th section of the Reform Act was put to him, when he said, " that he had land at Stowe, and always had." The deputy of the returning officer replied, that he had acted upon the principle of rejecting the votes of all persons who did not reply " yes" or " no," and that he should reject this vote. The voter tendered his vote for Hall.

Categorical reply to the questions of the returning officer not required.

Mr. Maule cited the 79th section of the Reform Act, " that no misnomer or inaccurate description of any person or place, named or described in any schedule to this act annexed, or in any list, or *register* of voters, or in any notice required by this act, shall in any wise prevent or abridge the operation of this act, with respect to any person or place, provided such person or place shall be so designated in such schedule, list, *register*, or notice, as to be commonly understood." There was nothing in the Reform Act to oblige a voter to answer " yes" or " no." He may answer what he likes, and the returning officer may judge from the answer whether he ought to put him upon the poll or not.

Mr. Rogers.—The vote was properly rejected. It was the duty of the overseers to see that the qualification was correctly inserted in the lists signed by the barrister; and the law has expressly empowered the barrister to correct these mistakes. The allowance of this vote would open a great door to fraud. The voter could not answer the question put to him. If he had said " yes,"

he would have rendered himself liable to have been indicted for a false answer.

The vote was put upon the poll.

William Hall's case.

The mother of this voter proved that he was born upon the 3d day of January, 1816.

Infancy of a voter not made an objection before the revising barrister, will not invalidate the vote.

Mr. Ma ule.—It may be admitted that an objection, not made before the revising barrister, cannot be made before this Committee. In this case the objection is not that the voter was not duly registered, but that he must be a male person of full age to entitle him to vote. The objection is one at common law. [Serjeant Talfourd: "By the 7 & 8 Will. III. c. 25, minors are forbidden to vote; and the Reform Act, section 75, preserves former acts."] That is only an act declaratory of the common law. The incapacities at the time of registration and of polling may differ. A custom-house officer may be registered, yet he cannot vote; *Rochester case* (*e*). So, also, a woman, if registered, would be unable to vote. The voter in this case was subject to a personal incapacity to vote.

Mr. Rogers.—It is clear that upon the ground of personal incapacity this voter might have been objected to before the revising barrister. The objection, not having been taken before the revising barrister, cannot be taken before this Committee. There is a clear distinction between the cases, where there is a change of circumstances affecting the qualification subsequent to the registration, and where the circumstances connected with the qualification are not altered subsequent to the registration. The overseers make out a list of all persons who combine the necessary qualifications; the occupation of a house, residence for twelve months, sufficiency of the value of the house, the payment of rates and taxes,

(*e*) K. O. & F. *ante*, 107.

and full age. If the title of the voter is defective in any of these particulars, he ought to be objected to before the revising barrister; and if such objection is not made, this Committee will not entertain it; *Windsor case* (*f*).

The vote was declared good, and retained on the poll.

William Scriven's case.

A bet upon the result of the election did not invalidate a vote, the vote being uninfluenced by it.

In this case it appeared that the voter had betted a bridle and saddle of the value of 6*l.* upon the result of the election. The bet was not paid, but was admitted, and the witness was satisfied that it would be paid. The witness, with whom the bet was made, voted, and Scriven, before he made the bet, stated, that he should vote as he ultimately did. The witness was not influenced in giving his vote by the bet, and he felt assured that Scriven was also uninfluenced by it; they voted upon different sides.

Mr. Harrison cited the decisions in the *Windsor case* (*g*) and *Worcester case* (*h*).

On the other side it was contended, that the *Windsor case* went beyond any former cases. It may be conceded that a wager may disqualify a voter, if there is any reason to suppose that it influences his conduct. In itself it is not a disqualification. Here, it was evident, the wager did not affect the vote (*i*).

Name retained on the poll.

William Adams's case:

An inhabitant burgess must fulfil

This voter was objected to, before the same revising barrister, in the years 1833 and 1834. In the year 1834

(*f*) K. O. & F. *ante*, 160.

(*g*) K. O. & F. *ante*, 191, 192, 193, 194.

(*h*) K. O. & F. *ante*, 255.

(*i*) See *Morgan* v. *Pebrer*, 2 Hodges R. 8, and 3 Bing. N. C. 466, and cases there cited of illegal wagers, and the principles upon which their illegality is determined; also the cases cited in the previous pages. The principle which would determine a wager to be bad, might be considered, *à fortiori*, to invalidate a vote; and it is surely safer to determine, that a law shall become a rule of conduct in all cases, if possible, than in each case to make its application depend upon an inquiry into the corrupting effect, the act it forbids may have produced.

there was no discussion respecting his right to be registered, nor was any evidence produced. The question affecting his vote had been fully argued in 1833, evidence was then gone into, and the decision of the barrister pronounced. In 1834 the same barrister made a note of the objection having been made, and wrote opposite to the name upon the register "retained," together with his initials, in order, as he stated, to enable the case to be brought before a Committee of the House of Commons. It appeared that this arrangement was made to avoid the repetition of an argument, and was assented to by the revising barrister and by the agent employed to support the right of the voter to be registered.

the conditions under which he could vote previous to the passing the Reform Act.

Mr. Serjeant Ludlow contended, that as no evidence in support of any objection was heard before the revising barrister, this vote ought not to be considered by the Committee; but it was resolved, that the objection was sufficiently proved, and that the parties might proceed with their case.

The objection to the voter was, that he was not an "inhabitant burgess," in which right he had voted at the last election.

The minutes of the order of reference, made by the House of Commons on the 25th of October, 1680, upon an election petition, were then read, together with the following minutes.

"Veneris, 26 die Novembris, 1680.

Extracts from the Journals of the House given in evidence.

"Sir William Pulteney reports, from the Committee of Elections and Privileges, that the said Committee having taken into consideration the matter touching the election and return of members to serve in this present parliament for the borough and town of Monmouth, had agreed upon four several resolves, which he read in his place, and afterwards delivered the same in at the clerk's table, where the same being again read, are as followeth:—

"Resolved, That the election of a burgess to serve in

parliament, for the borough of Monmouth, in the county of Monmouth, doth not belong to the burgesses, inhabitants of the borough of Monmouth, only.

" Resolved, That the burgesses, inhabitants of the borough of Newport and Usk, in the county of Monmouth, have a right to vote in the election of a burgess to serve in parliament for the said borough of Monmouth.

" Resolved, That Charles Lord Herbert is not duly elected a burgess to serve in this present parliament for the said borough of Monmouth.

" Resolved, That John Arnold, Esq. is duly elected a burgess to serve in this present parliament for the said borough of Monmouth.

" The first of these resolves being read:—

" Resolved, That the House doth agree with the Committee, that the election of a burgess to serve in parliament for the borough of Monmouth, doth not belong to the burgesses, inhabitants of Monmouth, only.

" The second of the said resolves being read:—

" Resolved, That this House doth agree with the Committee, that the burgesses, inhabitants of the boroughs of Newport and Usk, have a right to vote in the election of a burgess to serve in parliament for the said borough of Monmouth."

The extracts also repeated the other two resolutions of the Committee, and were accompanied by an affidavit of James Deacon, sworn before the Lord Mayor, deposing that the extract produced was a true copy from the original Journal of the House of Commons for the year 1680, now remaining in the custody of the clerk of the journals, and that he had diligently searched the schedule, made by order of the House of Commons, of documents and papers in the custody of the clerks of the House of Commons, for the original petition of John Arnold, Esq., named in the annexed extract, but that he could not find any entry, in the schedule, of the said

original petition, or any copy thereof, still being in existence, or in the custody of the clerks of the House of Commons, or that the same was remaining in the archives of the House of Commons (*j*).

The above minutes were read to prove the last determination (*k*) of the House, upon the right of burgesses inhabitants of Monmouth to vote at the election of members to serve in parliament.

"Inhabitant burgess," held to mean inhabitancy within the limits of the borough.

Mr. Serjeant Merewether. The 14th Geo. III. c. 58, repealed the Acts of the 1st Hen. V., and the 8th, 10th, and 23rd Hen. VI. so far as they related to the residence of persons to be members of parliament, or of the persons by whom they are chosen. A new system was introduced by this Act, which rendered the residence of burgesses unnecessary. In many boroughs, however, in order to satisfy the terms of the writ, it is still usual to admit candidates as burgesses before the election. By the common law, the electors of boroughs were all men inhabitant householders, *resiants* within the borough, *Glanville* (*l*); and from the terms of the decisions in *Glanville*, it is plain that it was considered there might be inhabitants not resiant, as there might be householders not resiant. In *King* v. *Hall* (*m*), householders not personally resident were decided to be householders within the statute 26 Geo. III. c. 38, s. 8. In this case residing within the borough was not treated to be necessary to establish the qualification of a householder within the city of Bristol, nor can residing within the limits of the borough of Monmouth be considered necessary to establish the qualification of inhabitancy. In the *Winchelsea case* (*n*), inhabitants were admitted to vote by this resolution, "That the said Tildens by the

(*j*) In the *Dorchester case*, 1 Fraser, the original petition and the minutes of the Committee were produced by an officer of the House.

(*k*) 2 Geo. II. c. 24, 3 Doug. 30, 56 and 130.

(*l*) Glan. 107, 142.

(*m*) 2 D. & R. 241, 1 B. & C. 123.

(*n*) Glanville, 18.

common law of England, are such *inhabitants* of Winchelsea as ought to have a voice in the said election, their said non-residence notwithstanding; because it appeareth not that they removed or dwelt elsewhere with a purpose there to settle and never to return to Winchelsea again. And that they had no servants at Winchelsea, yet they kept their own houses in their own hands, and might return at their pleasure. And if the absence of three months, or more, under a year and a day, should make such a non-residence as to make a non-inhabitant, in such a case as this, then one month's absence, or less, by the same reason, might work the like effect, and so great uncertainty introduced, which would be very inconvenient." [Committee.—In the case before us, the voter does not live within the borough.] [Maule. —No. An inhabitant burgess is one who has a dwelling within the borough.] Inhabitancy, means dwelling so near the borough as to be able to perform any duties in it. The word "inhabitant" was not introduced into any charter until the reign of Queen Elizabeth, and it has always been held by Committees and by the Court of King's Bench, that residing was not necessary to constitute inhabitancy; *Pontefract case* (*o*), *Dorchester case* (*p*). Residency and inhabitancy, are not synonimous terms; *Great Grimsby case* (*q*). By the 27th, 31st and 32nd sections of the Reform Act, residence is not required to be within the limits of the borough, but merely within seven miles thereof. The legislature has defined what is to be regarded as residence, even if residency and inhabitancy are to be considered synonimous.

Mr. Maule was heard in answer.

The Committee decided, "That the vote of Mr. William Adams was a bad vote."

(*o*) 1 Dougl. 185.

(*p*) 1 Dougl. 319, 355; 1 Fraser, 358.

(*q*) 1 Peckw. 65. See *Rex* v. *Duke of Richmond*, 6 Durn. & East, 561.

Mr. Rogers asked if the Committee considered the term "inhabitant burgess," so clear as to prevent evidence being given to explain it?

Mr. Serjeant Talfourd.—It is not determined at present that inhabitancy implies residence. In this case there is not the shadow of inhabitancy. There is a difference of opinion in the Committee, whether the word is not capable of explanation (*r*).

After some discussion, the Committee resolved, "That they did not consider that there was any ambiguity in the last determination of the House of Commons, which should induce them to allow evidence to explain it."

John Partridge's case.

Objection to a voter under the 8 Geo. IV. c. 37.

This voter was objected to under the 7th and 8th Geo. IV. c. 37, upon account of being employed as one of the band of Mr. Hall. One witness, only, was called in this case, who stated that John Partridge was by trade a master printer, and had always been considered a strong friend of Mr. Hall. Partridge led the band, and told the witness that he received the money to pay the performers, who each received 8*s*. 6*d*. per day, and "he no more than the rest." The uncle of Mr. Bailey the unsuccessful candidate, had lent money to the witness.

Vote retained (*s*).

The case was abandoned upon the part of Mr. Bailey and of the petitioners.

The Committee determined, "That Benjamin Hall, Esq., was duly elected, and that neither the petition nor the defence to it were frivolous or vexatious." And they also reported to the House, that they had altered the poll, by striking off the names of certain voters, mentioned by name in the resolution, who had not any right to vote.

(*r*) See *Rex* v. *Mashiter*, Hilary Term, 1837; 2 Term Reports K. B. 177.

(*s*) *New Windsor case*, *ante*, 173; and *Ipswich case*, 389, 390.

CASE XIX.

BOROUGH OF KINGSTON-UPON-HULL.

THE Committee was ballotted for upon July 21st, 1835, and consisted of the following Members:—

Alexander Bannerman, Esq. M.P. for Aberdeen, (*Chairman.*)

John Entwistle, Esq. M.P. for Rochdale.
Joshua Scholefield, Esq. M.P. for Birmingham.
Robert Vernon Smith, Esq. M.P. for Northampton.
Sir George Crewe, Bart. M.P. for Derbyshire.
Hon. Pierce Butler, Esq. M.P. for the County of Kilkenny.
Hon. Anthony Henry Ashley Cooper, M.P. for Dorchester.
Edward Ruthven, Esq. M.P. for the County of Kildare.
William Bingham Baring, Esq. M.P. for Winchester.
Thomas Law Hodges, Esq. M.P. for the County of Kent.
James Oswald, Esq. M.P. for Glasgow.

Petitioners:—Electors.

Sitting Member:—Colonel Thomas Perronet Thompson.

Counsel for the Sitting Member:—Mr. Harrison, K. C., Mr. Charles Austin, and Mr. Hillyer.

Agents:—Messrs. Taylor, Roscoe and Turner.

Counsel for the Petitioners:—Mr. Serjeant Spankie and Mr. Wrangham.

Agents for the Petitioners:—Messrs. Lyons, Barnes and Ellis, and Messrs. Cracknall and Terry.

THE petition against the return of Colonel Thompson was presented upon the part of the electors of the borough of Kingston-upon-Hull. It stated, that the last election for the borough occurred upon the 18th of June, 1835, and

that the only candidates were Thomas Perronet Thompson, Esq., and Humphrey Saint John Mildmay, Esq., David Carruthers, one of the late members of the borough, being recently deceased; and that the majority of votes for the sitting member was that of five votes over the other candidate. The petition alleged,

1st. That many persons voted at the election, who at the time of voting had ceased to be qualified, or had become disqualified.

2nd. That many persons whose names appear on the register of voters for the said borough, had not the same qualification for which their names were originally inserted in the said register, inasmuch as since the time of their respective registry, and previous to the time of their voting, they had ceased to occupy the premises in right of the occupation of which they had been severally registered, and did not, at the time of their voting, occupy the same.

3rd. That many persons voted in behalf of the said Thomas Perronet Thompson, as occupiers of certain premises in the register of votes for the said borough set forth, who, at the time of their voting, had not the same qualifications for which their names were originally inserted in the said register, inasmuch as since the time of their respective registry, and previous to the time of their so voting at the said election, they had ceased to occupy some part of the said premises, and did not in fact, at the time of their voting, occupy the whole thereof.

4th. That many persons voted for the said Thomas P. Thompson, as occupiers of premises which were not of the yearly value of 10*l.*, or the said voters were not themselves the legal and actual occupiers of the same, or were not rated, or had ceased to be rated in respect thereof, at the time of the said election.

5th. That many voters were counted on the said poll in favour of the said T. P. Thompson, who did not in

point of fact vote for him, but who were personated and fraudulently represented by other persons who had themselves no title to vote, but who fraudulently tendered their votes, and were improperly admitted to vote in the names and characters of the said first-mentioned voters.

6th. That many persons were admitted to vote for the said T. P. Thompson, at one of the several booths erected for taking the poll, who had already voted, or tendered their votes, and whose votes had been already admitted, or rejected, at another of the said booths.

7th. That many persons were admitted to vote for the said T. P. Thompson, as freemen, who were not entitled to vote thereat, inasmuch as for a long space of time previous to the said election they had ceased to be resident within the said borough, or within seven statute miles thereof, or who were disqualified or incapacitated to vote by the statute made in that behalf.

8th. That many persons voted for T. P. Thompson who were incapacitated to vote, by the receipt of parochial relief since the time of their registry.

9th. That many persons were bribed to give their votes for the said T. P. Thompson, or to forbear giving their votes for the said H. St. J. Mildmay.

10th. That many persons were compelled by violence, threats, intimidation, and force, practised by friends, agents, managers, committee men, and supporters of the said T. P. Thompson, to vote for the said T. P. Thompson, or to forbear to vote for the said H. St. J. Mildmay.

11th. That many persons voted for the said T. P. Thompson, who were disqualified from voting, inasmuch as they were respectively concerned in collecting, receiving, and managing the duties on stamped vellum, parchment, or paper, and inasmuch as they were severally appointed by the commissioners for distributing stamps.

12th. That many persons voted for the said T. P.

Thompson, who during the said election, or within six months previous to the said election, or within fourteen days after it was completed, were employed at such election as agents, attornies, poll clerks, flagmen, or in some other capacity, for the purpose of such election, and accepted or took from the said T. P. Thompson, or from some other person, in consideration of, or with reference to such employment, sums of money, retaining fees, offices, places, or employments, or promise of, or some security for the same.

13th. That some persons voted for the said T. P. Thompson, who had been unduly registered as freemen or burgesses, who at the time of registry had not resided six months previous thereto in the said borough, or within seven miles thereof, or who had received parochial relief within twelve months previous to their said registry.

14th. That many persons voted for the said T. P. Thompson, who had been unduly registered as the occupiers of premises within the said borough, inasmuch as the premises in respect of which they were so respectively registered, were not, at the time of their registry, of the clear yearly value of not less than 10*l.*; or that the said persons were not respectively in the legal or actual occupation of the same, or had not occupied the same for twelve months previous; or that they were not respectively rated in respect thereof; or had not, on or before the 20th day of July next previous to such registry, paid all the poor rates and assessed taxes which had become payable by them respectively, in respect of such premises, previously to the 6th day of April next preceding the registry.

15th. That many persons voted for the said T. P. Thompson, who were incapable to vote, being foreigners and aliens, and not having become naturalized, or become denizens of the realm.

16th. That many persons voted for the said T. P. Thompson, who at the time of their registry, and previous to the time of their voting, had become bankrupts,

or insolvents, and had thereby lost their qualification, and become disqualified from voting.

The petition also contained various charges of treating and bribery, none of which were attempted to be substantiated by the petitioners.

The prayer of the petition was:—That the House will take the premises into their consideration, and declare that the said election and return of the said T. P. Thompson is wholly null and void, and that the said H. St. J. Mildmay was duly elected, and ought to have been returned at the said election; and will direct that the name of the said T. P. Thompson be forthwith erased from the said return, and the name of the said H. St. J. Mildmay substituted therein in its place, and grant to the petitioners such other and further relief as to the House shall seem meet.

The chief cases related to personation and change of qualification, and were very clearly proved.

George Schonswar's case.

Variance between the number of the voter on the poll-book and in the exchanged list.

The voter was No. 4172 on the register, and No. 267 on the poll-book, according to the exchanged list. The consideration of this vote was objected to, upon account of the reference to the number upon the poll-book being erroneous; but the objection was not pressed (*a*).

Beilby Halliday's case.

Objection to a voter, not heard, where the Christian name on the poll-book and in the exchanged list differed.

The objection was made in the exchanged list to Beilby Halliday, that being the actual name of the voter. On referring to the number upon the poll mentioned in the list, the name was entered as that of William Halliday. The Committee were of opinion that they could not inquire into this case (*b*).

(*a*) K. O. & F. *ante*, 411.

(*b*) See Cor. & D. 167. In the list *Thomas* Watty was objected to, and upon referring to the corresponding number upon the poll and poor's rates, there appeared the name of *Francis* Watty. The Committee permitted evidence of iden-

John Widdup's case.

A witness was asked, in the course of his examination respecting this vote, if he was paid at the previous election for his attendance upon the Committee of Mr. Carruthers.

Witness examined upon the transactions of a previous election.

Mr. Serjeant Spankie.—What was done at a former election cannot affect Mr. Mildmay; *Penryn case* (*c*).

Mr. Austin.—The decision in the *Penryn case* was made respecting a question of agency. Mr. Mildmay is not a party to this petition; and he is not responsible for costs. The parties before the Committee are Colonel Thompson and the petitioners. The inquiry here is not upon a question of agency against Mr. Mildmay.

The Committee were of opinion that the question should be answered, but requested counsel to confine themselves as much as possible to the merits of the petition they were trying (*d*).

The witness was then asked the question, and admitted having been paid a sovereign, as a runner at the election of Mr. Carruthers, by Mr. Cracknall, the agent for the petitioners.

James Binnington's case.

The voter, James Binnington, was called on a previous day, in order to prove that he had personated a voter of the name of Widdup. In his examination, he stated, that he received from one B. a blue card with the name of Widdup on it. He was told that Widdup was a carpenter, and, to assist the deception he was about to practise, a short jacket was lent to him. Before the vote was given, he was asked this question, "Are you the same person whose name appears as John Widdup on the register of voters now in force for this town?" and

A voter may be examined against his own vote.

Name of a voter guilty of bribery and personation struck off the poll.

tity to be given. See also case of Thomas Garman in the *Middlesex case*, 2 Peckw. 49.

(*c*) K. O. & F. *infra*, 443.

(*d*) See next case.

he replied, " yes." He had previously polled in his own name, and though cautioned upon what he was about, persisted in voting as John Widdup. After he had polled, he saw B., and received from him 5*s*., and subsequently a sovereign more. At the election, in January, 1835, he was employed as a runner, and received 2*l*. 5*s*. (*e*). At the last election he was employed three days as a runner, and received for this service 30*s*. His name was put down as a runner, after he had promised his vote for Mildmay.

This evidence was read.

Mr. Austin.—It was formerly held, that a voter could not give evidence to invalidate his own vote; but the decisions have been overruled.

Serjeant Spankie.—The consideration is, the credit of the voter. What value can be attached to the testimony of the witness?

Vote struck off.

Thomas Hood's case.

So long as the incidents of tenancy continue, and the tenant is entitled to occupy, he may vote in respect of his tenement.

This voter entered into the occupation of a house, in respect of which he was registered, in July, 1833. In March, 1835, he delivered up the key of the house to his landlord, authorizing the landlord to let the house, and had not since been in it. He occupied the house under a written agreement, which was produced, and was liable to pay rent until July 25, 1835; but the landlord had agreed with him, that if any person, with whom he should be satisfied, would take the house, he would release him from his tenancy. On June the 1st a Mrs. Allen was put into possession by the landlord; but at that time arrears for rent were due, amounting to about 5*l*., which were not paid until the day the appointment of the Committee took place. When the voter came to the poll, his landlord, who was present, said that he was

(*e*) See the decision in the previous case.

glad he admitted being still tenant of the house, and that he would make him pay the rent; and he told the voter shortly afterwards, that until the arrears of his rent were paid, he should hold him to be in possession of the house. The rent amounted to 16*l.* a year, and the total sum paid to the landlord for two years was 29*l.* 6*s.* 8*d.*, the amount paid being calculated to June 1, 1835, from which day the landlord, after the payment of the arrears, considered Mrs. Allen to be his tenant, and that her rent was to commence from that day. The election occurred upon June 18.

Mr. Serjeant Spankie.—Under the Reform Act, the vote depends upon the actual occupation of the tenant, and not upon the mere right to occupy. If the voter does not actually occupy, his vote is bad.

Mr. Austin.—Up to the time of the receipt being given, the tenancy actually continued. No release was given until then. It is not necessary that there should be personal occupation to entitle a party to vote. During the existence of his tenancy Hood was in the occupation of the premises.

Vote held to be good.

Thomas Jarrett's case.

Voter examined to invalidate his own vote. A voter, subletting his premises, and ceasing to occupy, loses his right to vote.

The voter himself was in this case examined. He occupied a house, in respect of which he was registered, of one Forster. Upon the 1st of May, 1835, he entered into the occupation of another house, and gave up the house for which he was registered to a party to whom he had agreed to sub-let it, and who was to pay rent for it to him. He still paid rent to Forster, and when the term of his lease expired, would be bound to remove a fixture that he had erected.

Committee will re-hear a case.

The Committee held this vote to be good; but the next day, upon the application of Mr. Austin, agreed to reconsider their decision. Mr. Wrangham admitted, that he thought the decision wrong; but added, that if

this vote was struck off the poll, that of Hood ought to be removed at the same time. Mr. Austin pointed out the distinction between the two cases, and the Committee resolved, "That the vote of Jarratt, decided yesterday to be a good vote, upon re-consideration of it, be struck off the poll:" and no change of opinion was expressed upon the vote of Hood.

Agent for the petitioners not allowed to be present during the investigation of a case in which he was implicated.

Before the last case was considered, Mr. Austin commenced, upon the part of the sitting member, to open a case relative to treating by the agents of the petitioners, and applied to the Committee to direct that Mr. Cracknall, being a party implicated, should withdraw. The application was resisted by Mr. Serjeant Spankie; but the Committee resolved, "That Mr. Cracknall should withdraw from the Committee room, during the examination of any case in which he was personally implicated." Upon this decision being made, the petition was abandoned.

The Committee reported "That Thomas Perronet Thompson, Esq. is duly elected a burgess to serve in this present parliament for the borough of Kingston-upon-Hull; that neither the petition, nor the opposition to it, appeared to be frivolous or vexatious, and that they had altered the poll by striking off the names of

George Schonswar (a),
John Clark (a),
George Coleman (a),
William Leake (a),
Robert Garbutt (b),
Robert Gray (b),
John Widdup (a),
James Binnington (c),
Thomas Harper (b),
William Raynor (b),
William Lamb Hinds (a),
William Robinson (b),
Michael Angelo Lowther (b),
Charles Blaürock (b),
John Wing (b),
Thomas Dixon (b),
Thomas Jarratt (b), and
Peter Acklom (d),

as not having any right to vote."(*f*)

(*f*) The above were removed from the poll on the following accounts:—(a) personated; (b) loss of qualification; (c) bribery and personation; and one vote (d) struck off by consent.

CASE XX.

BOROUGH OF ENNIS.

THE Committee was appointed upon the 22nd of May, 1835, and consisted of the following Members:—

Sir Robert Heron, Bart. M.P. for Peterborough, (*Chairman.*)

Lewis Weston Dillwyn, Esq. M.P. for Glamorganshire.
James Silk Buckingham, Esq. M.P. for Sheffield.
Lord Claude Hamilton, M.P. for Tyrone.
Richard Jefferson Eaton, Esq. M.P. for Cambridgeshire.
John Minet Fector, Esq. M.P. for Dover.
Lord Brudenell, M.P. for Northamptonshire.
Major General Charles Palmer, M.P. for Bath.
Frederick North, Esq. M.P. for Hastings.
Alexander Graham Spiers, Esq. M.P. for Richmond.
Roderick Macleod, Esq. M.P. for Sutherlandshire.

Petitioners:—Electors.
Sitting Member:—Hewitt Bridgman, Esq.
Counsel for the Petitioners:—Mr. Harrison, K. C., Mr. Wrangham and Mr. Banks.
Agent:—Mr. Baker.
Counsel for the Sitting Members:—Mr. Joy, K. C. Mr. Austin, and Mr. O'Brien.
Agent:—Mr. Richard Lysart.

THE petition in this case was that of the electors, and stated, among various allegations, that at the late election of members to serve in Parliament for the town or free borough of Ennis, the candidates put in nomination were Michael Finucane, Esq., and Hewitt Bridgeman,

Esq.; that Hewitt Bridgeman was returned by a colourable majority, and that many persons not legally qualified were permitted to give their votes in favour of the sitting member.

Poll-books of the borough of Ennis produced by the clerk of the peace of the county of Clare, and received.

The poll-books were produced by William Kean, clerk of the peace of the county of Clare, who had received them from the Provost of Ennis, the returning officer, together with the usual affidavit. He knew the O'Donnels of Ennis, father and son. The father was town clerk of the borough, and he had seen him act in that capacity upon charter days, and at the last election of provost. The son had succeeded his father, or he acted for him as town clerk. Since the poll-books had been in the possession of the witness, a copy of them had been made by his clerks, who had free access to them for a month or six weeks. He did not see the copy made, nor could he say if any person on the behalf of the petitioners was present during the time it was being made. After he heard of the discussions in the Dublin case, he put the poll-books into a press, where they had since been kept. He kept none of the public documents of the borough of Ennis, and he could not say if there was any recorder of that borough (*a*). The affidavit of the provost was made before Mr. Macnamara, a magistrate of the county.

Patrick Curtain was then called. He was the deputy of the returning officer at the last election of a member for the borough of Ennis, and the poll was taken before him. He examined the poll-books, and declared them to be in the same state as when they were delivered by him to his principal (*b*).

Mr. Austin objected to the reception of the poll-books. Ennis is a borough, and not a county of a city, or a county of a town, and therefore the clerk of the

(*a*) There is no recorder of Ennis. See Report of the Commissioners appointed to inquire into the Municipal Corporations of Ireland, Parl. Papers, Vol. 27, Session 1835.

(*b*) See *Roscommon case, ante*, p. 259.

peace of the county is not the proper officer in whose custody the poll-books should be placed, or by whom they should be produced. The Act of the 1st Geo. IV. c. 11, s. 3, (*c*) regulates the duty of the returning officer with respect to the poll-books. Within twenty-one days after the final close of the poll, he ought to have delivered them to the officer who keeps the records of the borough, together with an affidavit sworn before a magistrate of Ennis, verifying them. It does not appear that there is a recorder of Ennis, but there is a town clerk, whose duty it is generally, even where there is a recorder, to keep the records of the borough. If produced by the town clerk of Ennis, the poll-books might be received. In this case they have not been in the proper custody, nor are they produced by the proper officer. It is true that in the *Clonmel case* (*d*), the poll-books had been delivered to the clerk of the peace, but the decision there is in the teeth of the act of parliament, and is wrong. The words of the statute are clear, and might without difficulty have been complied with. In the *Coleraine case* (*e*), the poll-book was produced by the proper officer, and the only doubt that arose was upon account of the returning officer having retained them too long in his own custody. Here the returning officer has parted with them to an improper person, and they are produced by a person who never had any title whatever to their custody. Secondly, have the books been so kept, that they might by possibility have been mutilated? If the Committee is of this opinion they cannot be received. What are the facts? A copy of the books was made for the petitioners, the agents of the petitioners had access to them, and the clerk of the peace did not superintend or appoint any person to watch the making of the copy. It was not until what had passed

(*c*) See this section cited *ante*, p. 261.

(*d*) Per. & K. 426.

(*e*) Per. & K. 507.

in the Dublin Committee was rumoured, that due care was taken, and then the books were locked up in a press. They cannot be received, if they have been so kept, that alterations might have been made in them. Thirdly, the act of parliament relative to the affidavit is not complied with. The affidavit was made before a magistrate of the county, and it does not appear that the magistrate acted in the borough. It cannot, therefore, be received (*f*).

Mr. Harrison replied, and the Committee resolved to receive the poll-books.

Edmund Maloney's case.

A witness allowed to be cross-examined respecting treating by the candidate whom the petitioners sought to seat.

A witness was asked, upon cross-examination by the counsel of the sitting member, if he had not dined upon several occasions with a number of other electors at the house of Mr. Finucane, during the election. It was objected, that as Mr. Finucane was not a petitioner, or a party before the Committee, such a course of examination was irregular. On the contrary, it was argued that as the petitioners claimed the seat for Mr. Finucane, an examination into his conduct was admissible (*g*). The Committee permitted the cross-examination to proceed.

Thomas Maloney's case.

Affidavit of registry only receivable in the case of the deponent therein.

In this case an affidavit of the registry of the vote of one Patrick Maloney was offered in evidence, but the Committee determined that no such affidavit should be produced, except as evidence of the vote of the deponent therein.

Michael Hill's case.

Objection to the value of a qualification not having been

The value of the house in respect of which the voter was registered, was about to be inquired into, when it was urged, that where no objection was made before

(*f*) The county magistrates do in fact act in the borough of Ennis, though there was no evidence given that they did so.

(*g*) See P. & K. 466, n.

the revising barrister to the qualification of the voter, the Committee would not entertain an objection to it; and the Committee resolved not to enter into evidence respecting value, when no objection on that ground had been made before the revising barrister.

made at the time of registration, the Committee will not entertain it.

William Greggs's case.

Upon a previous day this voter had been called by the counsel of the sitting member, and was cross-examined respecting his own qualification. It was proposed by Mr. Joy, to examine him in support of his own vote, and also to read the evidence already given by him in his cross-examination. The Committee resolved not to allow the voter to be called in support of his own vote, but that they would allow the evidence he had already given to be read.

A voter may not be called in support of his own vote; but his evidence respecting his own vote given in another case, upon a cross-examination, may be read.

Patrick O'Loughlin's case.

This voter was objected to upon the ground of removal from the house in respect of which he was registered, some time previous to the election. The objection was clearly proved. The admission in evidence of the declaration of the voter, made before the election, against his own vote, was objected to, but the Committee resolved to receive it (*h*). Upon declaring their resolution upon the vote, the Committee declared that Patrick O'Loughlin was not entitled to vote at the last election; and further, that they were determined not to enter upon any objection that could have been made at the time of registration; and they rejected this vote on grounds that had occurred since the registration (*i*).

Voter's declaration against his own vote admissible.

Objection that might have been made against the registration of a voter, will not be heard by the Committee.

Thomas Brown's case.

It was objected that this voter was not duly registered

Non-residence with-

(*h*) P. & K. and K. O. & F. p. 428, 429.

(*i*) See Maloney's case, *infra*, p. 437.

in seven miles, not an objection to the registration of a burgess, but to his voting.

as a burgess, upon account of his not residing within seven statute miles of the borough of Ennis.

Mr. Harrison referred to the previous resolution of the Committee not to open the registry, and contended that the objection to this vote came within its terms.

The Committee resolved to receive evidence respecting the vote, and added, that the Committee did not question the propriety of the voter having been registered as a burgess, but they thought, that to enable him to vote it was requisite that he should have resided six months within the limits, or within seven miles of the borough, and that if it was proved that he had not so resided, the vote would be bad (*k*).

George Trousdell's case.

Disqualification upon account of being a stamp distributor.

Objected to as a distributor of stamps.—The evidence against this vote, was that of a witness who stated that he knew the voter to be a stamp distributor, having frequently bought stamps of him, both before and since the election. The voter kept an open shop and sold tea. In his window were the words "stamp office." Another witness gave similar and not stronger evidence.

Knox, the editor of the *Clare Journal*, was called in support of the vote, and stated that Mr. R. Kenny was the stamp distributor of the county. He had bought stamps for his paper of Trousdell, but received receipts for the advertisement duty from Kenny, and the game certificates of the county were signed by Kenny.

The Committee decided the vote to be bad. An application was made upon a subsequent day by Mr. Harrison to have this case reheard upon a point of law, but the Committee resolved, "That they did not think it expedient to re-open any case that had been deliberately decided."

Re-hearing refused.

(*k*) See *Canterbury case*, K. O. & F. 324.

John and James Malony's case.

Both these voters occupied the same house and were objected to upon account of the insufficiency of its value. The first witness called to impugn the vote, having stated that the voters occupied, at the time of polling, the same parts of the house occupied by them at the time of registration: The Committee resolved, "Not to enter into the consideration of the case, being of opinion that these were good votes, there having been no change of occupation subsequent to the registration" (*l*).

Objection that might have been made before the revising barrister refused to be entertained by the Committee.

Case of Timothy Cusack and others.

These votes were objected to under these circumstances:—The houses occupied by the voters were leased by Byrn to one Breham, and by Breham to the voters. Upon the determination of the lease made by Byrn, his agent demanded of the sub-lessees the possession of the premises. They came outside of their houses for a few minutes, and it was agreed between them and the agent that they should continue in occupation as the tenants of Byrn, at the same rent they paid to Breham. No notice to remove was given, and the tenants were again put into possession almost immediately. They had since paid to Byrn the same amount of rent that they had agreed to pay Breham.

The Committee determined that the votes were good.

Temporary possession given to a landlord, by way of attornment, not such a suspension of the tenancy as to disturb the right of the tenant to vote.

Patrick Bourne's case.

The heading in the exchanged list to the class of objections, in which this voter was included, was:—

"For that the several premises they respectively registered as voters were not respectively of the clear yearly value of 10*l.*; and also, for that they and every

Strictness in describing in the exchanged list the nature of the objection, not insisted on.

(*l*) See *O'Loughlin's case, ante*, 435.

of them, at the respective times of their registry as such voters, had not held or occupied, for the space of six calendar months previous thereto, any house, warehouse, counting house, or shop, within the said borough of Ennis, which, either separately or jointly with any land within the said borough, occupied therewith by them respectively, as tenants under landlords respectively, or occupied therewith by them respectively as owners, was then, or is now, *bonâ fide* of the clear yearly value of not less than 10*l.*"

The actual objections to the voter were, change of qualification, and insufficiency of the value of the qualification. On the latter ground the voter had been objected to at the time of registration. It was contended, that the question of change of qualification could not be considered under the notice at the head of the list delivered to the petitioners; but it was resolved, "that it seemed clear to the Committee, that the objection did not come within the heading on the list of objections; but the Committee, having determined other cases with indulgence in that respect, they granted the same indulgence on this occasion, and counsel would therefore proceed."

Equality of votes.

Before the last vote was struck off, the votes for the sitting member and Mr. Finucane were equal, and a question arose upon the course the Committee should pursue. In England, under such circumstances, the election would be void; but in Ireland, in case of an equality of votes, the returning officer is, by the 35 Geo. III. c. 29, s. 13, enabled to give a casting vote. The difficulty was removed by another vote, that of Patrick Bourne, being decided upon by the Committee.

The Committee reported to the House, That Hewitt Bridgeman, Esq. was duly elected a burgess to serve in this present parliament for the town or borough of Ennis, and that neither the petition, nor the opposition to it, was frivolous or vexatious; and that they had altered

the poll taken at the said election, by striking off the names of John Cullinan, Edmund Malony, Michael Hill, Patrick Arthur, John Quigley, Joseph Molony, Patrick Malony, Patrick Collins, Michael Bourke, Patrick O'Loughlin, John Lysaght, Thomas O'Hennesy, George Trousdell, Michael Ryan, and Patrick Byrne, as not having a right to vote.

CASE XXI.

BOROUGH OF PENRYN AND FALMOUTH.

THIS Committee was ballotted for upon the 30th day of June, 1835, and consisted of the following members:

John Wilkes, Esq. M.P. for Boston, (*Chairman.*)

Sir Andrew Agnew, Bart. M.P. for Wigtonshire.
Robert Henry Hurst, Esq. M.P. for Horsham.
Peter Ainsworth, Esq. M.P. for Bolton.
Charles Delaet Waldo Sibthorp, Esq. M.P. for Lincoln.
Thomas Read Kemp, Esq. M.P. for Lewes.
Sir Hugh Purvis Hume Campbell, Bart. M.P. for county of Berwick.
Thomas Baring, Esq. M.P. for Yarmouth.
Corathwaite John Hector, Esq. M.P. for Petersfield.
Richard Alsager, Esq. M.P. for the county of Surrey.
John Henry Seale, Esq. M.P. for Dartmouth.

Petitioners:—Electors.

Sitting Member:—Robert Monsey Rolfe, Esq. (since knighted).

Counsel for the Petitioners;—Mr. Harrison, K. C., Mr. D. Pollock, K. C., Mr. Wrangham, and Mr. Horsford.

Agent:—Mr. Baker.

Counsel for the Sitting Member:—Mr. Thesiger, K. C., and Mr. Austin.

Agents:—Messrs. Norton and Chaplin, London; and Messrs. Pender and Genn, Falmouth.

THE petition in this case stated, that by the Reform Act the town of Falmouth was united with the borough of Penryn, and the united boroughs were to return two Members to Parliament; that Falmouth is a packet station

for the government packets; there is a resident superintendant, and the government have great influence from the circumstance in elections; the captains, masters, surgeons, mates, and others persons engaged and employed in the packets, can be arbitrarily dismissed by the superintendant or by the Board of Admiralty; and that the government, therefore, have absolute control over them, and through them great control over such of their friends and connections as are electors of the borough.

It then stated, that Robert M. Rolfe, Esq. vacated his seat upon being appointed Solicitor-General; that a new writ was issued upon the 18th of April, and that upon the 28th and 29th of April the polling took place; that at the close of the poll on the 28th, the numbers, as announced by the returning officer, were, for Lord Tullamore 281 votes, and R. M. Rolfe 278 votes, being a majority of three in favour of Lord Tullamore. The petitioners then stated, that the number of promises of votes and pledged votes that remained unpolled at the close of this day's polling, left no doubt whatever that there would be a large majority on the poll for Lord Tullamore upon the following day, but it was found, that in the course of the evening the agents and friends of R. M. Rolfe were tampering with the unpolled voters, public houses were opened, the humble class of voters were kept in a state of intoxication all the night, and, in many instances, large sums of money were offered, and in many instances paid to voters, to induce them to vote for the said R. M. Rolfe, or to forbear to vote for the said Lord Tullamore, and in many cases to induce voters to go out of the borough upon pretence of business or employment, to prevent their voting at the said election for Lord Tullamore. That the most open undisguised violence and intimidation was also resorted to, by and on the part and behalf of the said R. M. Rolfe, and his friends and agents, to terrify and compel voters to vote for the said R. M. Rolfe, and, failing that, to prevent

them voting at the said election. That voters, tradesmen, were threatened by their employers to be dismissed from their employ and service, if they did not vote for R. M. Rolfe, or if they voted for Lord Tullamore; and in the like manner voters having shops, and carrying on trade and business in the borough, were informed they would lose all custom and become marked men if they did not vote for the said R. M. Rolfe.

The petition also stated other general as well as specific charges of bribery, treating, and intimidation against the sitting member; and also that various unqualified persons had been permitted to vote.

The charges endeavoured to be established against the sitting member were those of bribery and treating.

Mr. Thesiger, early in the investigation of the case, objected to evidence to affect the sitting member being given, respecting the conduct of any person who was not first proved to be his agent.

Mr. Pollock replied, that he was proceeding to show that the election was obtained by bribery and treating. He did not seek, by the evidence he was offering, to affect the sitting member individually with the charges he was endeavouring to establish, but to affect the election.

On a general charge of bribery, agency need not be proved, but otherwise, when the evidence is to affect the sitting member.

The chairman stated, "That the Committee were all of the opinion, that it was not necessary to prove, in the first instance, the agency on a charge of general bribery, and if counsel was not about to affect the sitting member, the opinion of the Committee was, that the evidence might proceed upon the charge of general bribery."

After some discussion upon this resolution, the Committee unanimously resolved, "That the petitioners first proceed with their charge of bribery, affecting the sitting member, and that in such case no evidence be received respecting him without proof of agency;" and the chairman added," That it was the opinion of the Committee, counsel should first proceed with that part of their case that should affect the sitting member with

bribery, that they should then proceed with the scrutiny, and that then the Committee would hear any charges of general bribery affecting the borough."

No evidence being given to the Committee, in the opinion of its members, sufficient to establish agency against the sitting member, the petition was abandoned.

Committee will not hear evidence respecting the expenses of a former election, upon an inquiry respecting agency.

In the course of the examination of a witness, to prove agency against the sitting member, an inquiry was commenced respecting the expenses of a former election, but the Committee determined, "That the course of examination referring to expenditure connected with the former election be not pursued, because it appears irrelevant to the present inquiry (*b*)."

The Committee resolved, That Sir Robert Monsey Rolfe was duly elected a burgess to serve in this present parliament, and that neither the petition, nor the opposition to it, was frivolous or vexatious.

(*b*) *Ante*, p. 427.

CASE XXII.

BOROUGH OF YOUGHAL.

The Committee was appointed upon May 21, 1835, and consisted of the following members:

James Alex. Stewart Mackenzie, Esq., M. P. for Ross-shire, (*Chairman.*)

Fitzstephen French, Esq. M. P. for the county of Roscommon.
William Wharton Burdon, Esq. M.P. for Weymouth.
Henry Handley, Esq. M.P. for the county of Lincoln.
Lord Viscount Alford, M. P. for Bedfordshire.
Sir John Mordaunt, Bart. M. P. for Warwickshire,
James Buller East, Esq. M.P. for Winchester.
William Turner, Esq. M.P. for Blackburn.
John Heathcoat, Esq. M .P. for Tiverton.
Lord Russell, M. P. for Tavistock.
Thomas Bewes, Esq. M. P. for Plymouth.

Petitioners:—Electors.

Counsel for the Petitioners:—Mr. Harrison, K.C. and Mr. D. Pollock, K. C.

Agents:—Mr. M'Queen, London; Messrs. Pollock, Youghal.

Sitting Member:—John O'Connell, Esq.

Counsel for the Sitting Member:—Mr. Thesiger, K. C. Mr. Austin and Mr. Wakefield.

Agent:—Sir Robert Sydney.

THE petition alleged, that by the act of the 2 & 3 Will. IV. c. 68, it was provided, that no person should be admitted to vote at any election of a member to serve in any future parliament, unless such person should have been duly qualified as therein mentioned, and duly registered under the said act, and that no registry should be valid unless made conformable to the said act.

That it was provided by the said act, a special session

for the purpose of registering votes should be holden in each county, by and before the assistant barrister for such county, on such days and at such places as the lord lieutenant of Ireland should appoint; and that by the said act the lord lieutenant was authorized, by warrant under his hand, to appoint for the duty of presiding at the special session, to be first held for the registering votes under the said act, in any county or borough, any barrister or barristers, of not less than six years standing at the Irish bar, to be assistants to, or deputies of the assistant barrister, or chairman of such county; and all the powers, duties, rights and privileges given or imposed by the said act upon any such assistant barrister or chairman, were, by virtue of such warrant, given to and imposed upon such assistant or deputy; that the act prescribed the mode in which the registry of voters should be conducted, and enacted, that upon any person being declared to be registered as a voter, such person should obtain a certificate upon parchment declaring such right.

That a special session was held under and by virtue of the said act, appointed by the lord lieutenant to be holden in for the said borough of Youghal, to commence at Youghal on the 18th of October, 1832, and that Joseph Stock, esq. barrister at law, was, by warrant under the hand of the lord lieutenant, appointed for the duty of presiding at the special session so first appointed to be holden in and for the said borough; that the said Joseph Stock undertook the said duty, and proceeded with the registration of votes accordingly.

That by many illegal and erroneous decisions of the said Joseph Stock, a great number of persons were admitted to be registered as householders at the said sessions, who were not entitled to be registered as voters for the said borough of Youghal; and that the said persons at the said sessions unduly obtained certificates of their said registry, which certificates, so long as they continue,

will entitle them to vote, and also to register, upon the production thereof, without further proof on oath; and that a great number of persons, whose registry was invalid, in not being conformable to law, and by reason of the said last-mentioned persons not being duly qualified, did in like manner unduly procure certificates objectionable as aforesaid.

That the said Joseph Stock, as such deputy assistant barrister, did not, at the said sessions, sufficiently inquire into the value of the houses, warehouses, counting-houses, shops, or other premises out of which the persons claiming to be registered sought to vote; that a large number of persons were admitted to be registered by him, who did not respectively hold and occupy within the said borough of Youghal, as tenants or owners thereof, any houses, warehouses, counting-houses, or shops, which either separately or jointly with any land within the said borough, occupied therewith by them respectively as tenants under the same landlord, or occupied by them respectively as owners, were of the clear yearly value of 10*l.* respectively.

That by reason of the erroneous decision of the said Joseph Stock, a great number of persons, who ought not to have been and who were not entitled to be registered, were unduly put and illegally appear upon the registry of the said borough; that several of the persons registered as householders, and in that capacity entitled to vote at the elections of members of parliament for the said borough, did, after such registry and before the said last election for the said borough, quit or charge the houses or tenements out of which they had so respectively registered, and in respect of which registry alone they claimed the said right of voting, and thereby lost their said right of voting, the respective qualifications out of which they had registered not subsisting at the time of holding the aforesaid election, and the houses of several of the said persons in respect of which they were registered, became after their registry, and before the said

last election, of insufficient value to entitle the said persons to vote at the said election.

That of the persons who voted as householders at the said election for the said John O'Connell, several, at the time of their so voting, owed more than one half-year's municipal cesses, rates and taxes, in respect of the premises mentioned in their certificates of registry.

The petition then alleged, that the returning officer and his deputy considered themselves bound to receive the votes of parties producing their certificates of registry; and that a great number of persons, being persons professing the Roman Catholic religion, who had not taken and subscribed the oath by law required to be taken by them previous to their voting, and who had not produced certificates thereof, or whose names, with their titles and additions, were not entered upon the rolls for that purpose appointed, were permitted by the said returning officer to vote, and did vote, at the said election for the said John O'Connell, though they were not legally entitled to vote.

It was also charged, that Mr. John O'Connell was not duly qualified by estate to sit in parliament; that by himself, his agents, friends and managers, partisans and others upon his behalf, were, during the said election, guilty of most flagrant and notorious acts of intimidation and also of bribery, but none of these charges were pressed.

Poll-books.

The poll-books were produced by the town clerk of Youghal, together with the usual affidavit, which had been sworn before the recorder of the borough, who was a justice of the peace acting in the borough and in the county.

Michael Coleman's case.

Execution of a writ of possession, and suspension of the occupation of the voter

The house in which the voter lived was let by the Duke of Devonshire to one Donovan, and by him sub-let to the voter. In consequence of Donovan being in arrear for his rent, a writ of possession was issued against him. The agent of the Duke of Devonshire attended at

for a short time, held not to invalidate the vote.

the house of the voter with the bailiff who was to execute the writ, and informed the voter of the business upon which they were come. Coleman declared himself ready to deliver up possession, and came out of the house, leaving no person in it, locked the door, and delivered the key to the bailiff, by whom it was given to the agent of the landlord. The furniture of Coleman remained in the house, and within ten minutes after the key was delivered up, the agent agreed to re-let to him the house, opened the door and permitted him to re-enter.

The vote was held good. (*a*)

John Power's case.

A freeman must be registered six months before he can vote.

This voter was registered as a freeman, and was objected to, upon account of having voted within six months after he had been registered. The Committee, however, resolved, "That it was not necessary that the registration of a freeman should be made six months previous to his voting."

Re-hearing of a case granted.

Upon the next day, Mr. Thesiger applied to have the case re-argued, upon the ground of its importance, and as it involved other votes. The Committee acceded to the application, and agreed to hear one counsel upon each side. After the case had been re-heard, the Committee resolved to rescind (*b*) their former resolution, and determined that John Power, freeman, not having been registered for six months prior to voting, had failed to comply with the provisions of the statute of the 2 & 3 Will. IV. c. 88, and that his vote should be struck off the poll (*c*).

Previous decision of the Committee reversed.

William Flanaghan's case.

Non-payment of a rate for lighting the town of Youghal,

This voter was objected to, under the 7th section of the Irish Reform Act, which requires every elector to pay grand jury and municipal cesses, rates and taxes, which shall have become legally due and payable in re-

(*a*) *Ante*, p. 437.

(*b*) See *ante*, p. 429.

(*c*) See the arguments upon the same point in the *Galway* case, Perry & Knapp, 315.

spect of the premises occupied by him, over and above and except one half-year's amount of such cesses, rates and taxes. The rate, for the non-payment of which his vote was opposed, was levied under the general act of the 9 Geo. IV. c. 82, for the purpose of lighting and watching the town of Youghal.

under the general act of the 9th Geo. IV. c. 82, the non-payment of a municipal cess.

The secretary of the commissioners for lighting and cleansing the town of Youghal was called. A valuation of the town of Youghal is made every year, and in the valuation made in the year 1832, William Flanaghan was rated. There was also a valuation in the autumn of 1834, and the order for levying this rate was made August 4, 1834. The notice of the rate was duly given, and the appointment of valuers and of collectors was shown from entries in the minute and register books of the commissioners, which were produced.

The collectors produced the rate and the warrant for the collection. Flanaghan's name was inserted upon the rate for a house in Main Street, and it appeared that he had been applied to several times for the payment of the rate due from him, and which was still unpaid. When the election took place the electors produced their receipts before they were polled. Flanaghan, before he voted, met Mr. Romaine and went with him to the office of the collector; but finding that the collector was not within, they went to the polling booth and there met Brown, one of the commissioners under the act, when Romaine gave to him half a sovereign, desiring him to take the rate due from Flanaghan, which amounted to about seven shillings, out of it. Brown afterwards paid back the half-sovereign to Romaine; but admitted to the collector that he had received it, through Mr. Romaine, from Flanaghan, in order to pay the rate upon the day of election.

Mr. Wakefield shortly contended, that this rate was not a *municipal* rate (*d*); and, secondly, that the office of

(*d*) The essential characteristics of a municipal tax were fully considered in the *Dublin case*.

the collector being closed when the voter called there, payment to one of the commissioners was sufficient.

Mr. Pollock replied and cited the 31st section of the 9 Geo. IV. c. 82, which enacts, "That no commissioner shall receive or meddle with any monies levied or collected under this act."

Vote struck off.

John M'Guire's case.

The opening of the register refused in the case of votes objected and unobjected to before the revising barrister.

Mr. Austin argued in this case, at great length, against the opening of the register, and was replied to by Mr. Harrison (*e*).

The Committee resolved, "That they would not open the register, either in cases of votes unobjected to, or of votes objected to before the revising barrister" (*f*).

The petition was abandoned, and the Committee reported—

That John O'Connell, Esq. was duly elected a burgess to serve in the present parliament for the borough of Youghal.

That the petition of John Musgrave Whitmore and others, electors of the borough of Youghal, did not appear to be frivolous or vexatious.

That the opposition to the said petition did not appear to be frivolous or vexatious.

That they had altered the poll by striking off the name of Phillip Denchy, &c. as not having any right to vote.

(*e*) The late Mr. Knapp took the note of the argument in this case, but unfortunately left it in so imperfect a state, that after several attempts to prepare it for the press, it has been thought best to suppress it; and the difficulty felt in doing so has been removed, in consequence of Mr. Edward H. Fitzherbert having already completed for the press the able arguments upon the same point in the *Carlow case* of 1837.

(*f*) In the *Longford case*, April 17, 1837, the resolution upon the question of opening the register was: —"That the Committee do now proceed to the examination of such votes as were objected to at the time of registration." In the *Carlow case* (heard April 26, 1837,) the Committee refused to open the registry in cases where the parties had been objected to before the revising barrister. (Printed Minutes of Evidence, p. 5, 6.)

CASE XXIII.

CARLOW COUNTY.

The Committee was appointed upon the 28th of July, 1835, and consisted of the following Members:—

Charles Barclay, Esq., M. P. for the County of Surrey, *(Chairman.)*

Wilson Jones, Esq. M.P. for Denbigh.
William Tatton Egerton, Esq. M.P. for Cheshire.
Elliot Thomas Yorke, Esq. M.P. for Cambridgeshire.
James Milnes Gaskell, Esq. M.P. for Wenlock.
Sir Richard Nagle, Bart. M.P. for Westmeath.
John O'Connell, Esq. M.P. for Youghal.
Hon. Edw. Harbottle Grimstone, M.P. for Hertfordshire.
Lord Viscount Sandon, M.P. for Liverpool.
John Henry Lowther, Esq. M.P. for the City of York. (*a*)
James Power, Esq. M.P. for the County of Wexford.

Petitioners:—Electors.

Counsel for the Petitioners:—Mr. Serjeant Spankie, and Mr. Austin.

Agents for the Petitioners:—Mr. Stephens, and Messrs. Bate and Young.

Sitting Members:—Nicholas Aylward Vigors, Esq., and Alexander Raphael, Esq.

Counsel for the Sitting Members:—Mr. Harrison, K.C. Mr. D. Pollock, K.C., Mr. Hill, K.C., and Mr. Howley.

Agents:—Mr. Baker, London; Mr. G. Fitzgerald, Dublin.

TWO petitions were presented in this case from the same parties, but the one presented upon the 3rd day

(*a*) Upon the 4th of August the attendance of Mr. Lowther was excused, upon the ground of ill health.

of July was the only one proceeded upon, recognizances not being entered into with respect to the second petition.

The petition stated, that an election of members to serve in parliament for the County of Carlow took place upon the 15th of June, 1835, and that on the 16th of the same month the sheriff proceeded to poll the said county, and continued to do so until Friday, the 18th of June following, when he declared the majority of votes to be in favour of Nicholas Aylward Vigors and Alexander Raphael, who were thereupon declared and returned by the sheriff to be duly elected; the number of votes appearing upon the poll being, for the said N. A. Vigors, 627; for A. Raphael, 626; for Thomas Kavanagh, 572; and for Henry Bruen, 572. And it was alleged:—

1. That the majorities of the sitting members were procured, not only by violence, terror, threats, and intimidation, but by the grossest perjury, bribery, and treating, and by the payment of large sums of money, by and on behalf of the sitting members, or one of them, to electors, and to other persons capable of influencing electors of the said county, and of procuring and endeavouring to procure votes, for the purpose of securing their return, and by other undue, illegal, corrupt, and unconstitutional means.

2. That persons were permitted by the sheriff to poll who were not entitled to vote, they not having been duly registered according to the acts now in force for registering leaseholders or freeholders in Ireland; inasmuch as they had not at the time of their alleged registry, or at all, taken or subscribed such oaths as the said statutes prescribe to be taken and subscribed by persons claiming to register as leaseholders or freeholders; nor were any such affidavits lodged or deposited with the clerk of the peace for the said county,

or his deputy, or filed among the records of the said county; the affidavits which were, in fact, lodged or filed being insufficient, and not conformable to the laws now in force in respect thereof.

3. That several persons voted who had not any legal title to the land and premises out of which they were registered; who had not a freehold or leasehold of sufficient yearly value to confer a qualification to vote; who having been unduly and illegally registered by the assistant and deputy-assistant barrister, although they had not been, for six months previous to the time of their respective registries, in possession of the premises out of which they claimed to be registered, under any sufficient title or estate conferring a franchise, or right of voting, their respective titles and estates having been granted and conveyed to them immediately previous to the date of their said registries, for the purpose and with a view and intent of manufacturing votes at elections; and that several other persons, so registered, although professing to derive their respective leases from persons competent to grant, and having, at the time of granting the same, sufficient estate or title vested in them to make or grant such leases, who were not competent to make or to grant such leases.

4. That persons were polled for the sitting members, whose interests, in right of which they were registered, had been surrendered, or had terminated previous to the said election; or who had parted with, or had been dispossessed of the property in respect of which their qualifications had been obtained.

5. That the said N. A. Vigors and A. Raphael, by themselves, their agents and managers, or by persons employed by them, or on their behalf, did, after the date of the writ for the said election, and during the said election, and before their said election, give, present, and allow to persons having or claiming to have

votes at the said election, money, meat, drink, and entertainment, and did make and enter into promises, agreements, obligations, and engagements, to give and allow meat, drink, presents, rewards, and entertainments to and for such persons.

6. That the priests and Roman Catholic clergy of the said county interfered with and influenced the electors of the Catholic persuasion, in the most violent, illegal, and unconstitutional manner, in order to compel them to vote for the sitting members; and used their utmost exertions to excite a rancorous hostility against the said Thomas Kavanagh and Henry Bruen, and availed themselves of the superstition of many of the most ignorant Catholic electors, to induce them to believe that they would be highly criminal, and incur the risk of damnation, if they voted for the said T. Kavanagh or H. Bruen.

7. That priests and Roman Clergy attended in each polling booth during the entire time of polling, each day; and, having taken up conspicuous positions in the said booths, where any person coming to the poll must necessarily see them, they did, in the most violent manner, endeavour to intimidate and deter the Roman Catholic electors who came forward to vote for the said T. Kavanagh and H. Bruen from doing so, and thereby did deter some from voting at all, and others not to vote for the said T. Kavanagh and H. Bruen.

8. That even though the said Alexander Raphael had been duly elected by a majority of votes of the said county, yet that his election and return was and is void; inasmuch as he is an alien, and not of the king's liege subjects; and inasmuch as he has not a sufficient qualification to entitle him to be elected or returned to serve in parliament, or to sit therein.

The poll-books were produced, together with the following affidavit:—

" County of Carlow, } James Hardy Eustace, of Har-
to wit. } dy Mount, in the county of Carlow, esquire, of the said county, magistrate, maketh oath and saith, that the poll-book of the election held at Carlow, in and for the said county, on Monday, the 15th day of June instant, and now delivered to the clerk of the peace of the said county, are the original poll-books of the election of the said county: And saith, that from and after the final close of the poll at the said election, which took place upon Friday the 19th day of June last, to this day, there has not been, to the knowledge and belief of the said James Hardy Eustace, any obliteration, erasure, addition, or alteration, in the said poll-book.

It is sufficient if the returning officer, in the affidavit accompanying the poll-book, swears according to his "knowledge and belief," and does not positively affirm that there has been no obliteration, erasure, addition, or alteration in the poll-book.

James Hardy Eustace,
High Sheriff of the County of Carlow.

Sworn before me at Carlow,
this 27th day of June, 1837.
William Fishbourne,
Magistrate of the County of Carlow.

Mr. Harrison objected to the affidavit. The poll-books ought to be kept in such custody that the returning officer shall be able to swear positively in the words of the act, " that from the final close of the poll to the time he delivers in the same, there has not been any obliteration, erasure, addition, or alteration made therein." The affidavit does not distinctly verify the poll-books, but leaves it uncertain whether they have been altered or not. In England great strictness is observed in the verification of the poll-books; and even the clerks by whom they have been copied, are frequently called to prove that no alteration has been made in them.

Mr. Austin.—It is true, that in English cases the proof of the poll is generally strict; and it was in order to avoid such strictness, and to facilitate the proof of the poll, as well as to save expense, that the act of the

1 Geo. IV. c. 11, relating to Irish elections, was passed. But is it required that the provisions of this act should be strictly observed? In the *Clonmel case* (*b*), the poll-books were kept by the returning officer beyond the twenty-one days mentioned in the act, and yet they were received; and in the same case they were handed over to the custody of the clerk of the peace for the county, instead of to that of the town clerk of Clonmel. Objections were made on similar grounds in the *Ennis case* (*c*), and were over-ruled. It is sufficient if the provisions of the act are substantially complied with; in these respects it is merely directory. In the *Dublin case*, an objection to the jurat of the affidavit of the returning officer, that would have been fatal to an affidavit both in law and equity, was over-ruled: and a similar objection was over-ruled in the *Cork City case* (*d*). No strictness is required in these cases. There is no form of the affidavit prescribed, and it is for the Committee to declare if that used is sufficient. The returning officer has sworn according to his "knowledge and belief," and there is no reason to presume that any alteration or erasure has been made in the books without his knowledge. All that is necessary is, that the poll-books should be proved to the satisfaction of the Committee, and for the form of the affidavit the petitioners cannot be account able.

The Committee was of opinion that the affidavit was sufficient.

The poll-books were then put in, together with the register of electors, affidavits, and certificates.

Committee will not interfere with the conduct of the case.

The counsel for the petitioners then proposed to proceed at once to the scrutiny, but Mr. Hill applied to have the scrutiny deferred, in order to avoid unnecessary expense, until the charges against the sitting members

(*b*) P. & K. 426.
(*c*) *Ante*, p. 432.
(*d*) *Ante*, 275.

of bribery, and the charge of Mr. Raphael being an alien, should be disposed of.

Mr. Serjeant Spankie stated, that notice of an application for a commission had been given, and that it would be most convenient to have it made before proceeding with any other part of the case. To this Mr. Hill replied, that the application would depend upon the determination the Committee should make upon the question respecting the opening of the registry.

The Committee directed the case to proceed, without interfering with the course the parties thought proper to take (*e*).

Peter Curren's case.

The voter was objected to before the revising barrister, in Ireland, upon account of the freehold in respect of which he claimed to be registered, being of insufficient value. The objection was not allowed, and the name of the voter was inserted in the register.

1. That the power to open the registry is not taken away by the Irish Reform Act.

Mr. Hill objected to the register being opened, and was replied to by Mr. Austin (*f*).

2. That the Committee think it convenient to limit their inquiry to votes objected to before the revising barrister.

The Committee came to the following resolutions:—

1. "That it is the opinion of this Committee, that their jurisdiction over the registration has not been taken away by the Irish Reform Act.

2. "That the Committee think it convenient to limit their inquiry to the cases where the objection to the voter has been made at the time of registration" (*g*).

Application for a Commission.

Application for a commission to examine witnesses in Ireland, refused.

Mr. Harrison, upon the decision against opening the register being made, applied to the Committee for a commission to examine witnesses in Ireland. The application was made under the 42 Geo. III. c. 106, s. 4. The petitioners have objected to seventy-one persons, upon account of their not having been in possession of

(*e*) *Ante*, 304, 305.
(*f*) *Ante*, 450, note (*c*).
(*g*) *Infra*, 471.

their qualification for six months previous to their voting; to eight, for not having taken the proper oaths; to 166, upon account of the insufficiency of the value of their qualification; and to fifteen, upon account of having no freehold. The sitting members have objected to 227 persons upon account of the insufficiency of the value of the property in respect of which they are registered; to twenty-three, for having assigned or sold the property in respect of which they were registered; to twelve, upon account of their leases being expired, or delivered up; to one, as a bankrupt; to six voters in the borough of Carlow, who were improperly placed on the register for the county; to 250, who have no lease of their property; and to three, who are not in possession of any property. In each of these cases distinct facts must be proved, distinct inquiries made, and a separate trial must take place. They cannot be united together, so as to enable the Committee to dispose of them in classes. The *Monaghan case* commenced upon the 2nd of July, and it lasted until the 30th of that month; and yet, in these twenty-eight days, only forty-five votes were struck off. If a commission is granted, the objections will be investigated where the evidence will be easily obtained, and where the witnesses will be at hand. The inquiry will be thus satisfactory and completely pursued.

Mr. Baker, Parliamentary agent, was then called and examined upon the probable duration of the inquiry, if the objections made upon both sides were heard before the Committee, and upon the expense of bringing over witnesses to England, and detaining them for examination.

Mr. Serjeant Spankie opposed the application for the commission. The statute was passed in order to afford assistance in these inquiries when the communication with Ireland was much more difficult than at present. Upon the same principle that the *venue* is frequently permitted by courts of common law to be changed, the

commission ought to be refused. It is impossible in Ireland to obtain an impartial tribunal; and if witnesses are examined there, they will be subjected to an improper influence from which they will be unable to exempt themselves. It is here only that an unprejudiced inquiry can be made. Besides, it is well known how useless the evidence very frequently is that is taken before those who are not to decide the case to which it relates. The returns made to the issues directed to be tried by the Court of Chancery sufficiently prove the difficulty a third person experiences in bringing out the information essential to a final judgment. By granting the commission, the Committee will place itself in the hands of those who will be without the aid of counsel, and who will have very imperfect means to continue this inquiry. Those applications are only made for the purposes of delay.

August. Application for a commission renewed and refused.

The Committee resolved not to grant a commission (*h*). After the Committee had, upon a subsequent day, decided the rule by which the value of the qualification of voters should be determined, Mr. Howley applied for leave to be heard to renew the application for a commission.

Mr. Austin objected upon two grounds. 1. That in point of law, and upon the construction of the statute, the Committee could not permit the application to be made. 2. That the Committee regarding the discretion vested in them, and the intention of the statute, must refuse it. Mr. Austin afterwards stated, that he should not press the objections, though he neither abandoned them, nor admitted that the Committee had the power to grant the commission.

Mr. Howley then applied to the Committee to permit a commission to issue.

(*h*) In the *Carlow County case*, April 27, 1837, (Printed Minutes, p. 6,) the Committee inquired if the parties would consent to the issue of a commission, but counsel intimated that they could not agree to it.

Refusal to grant time.

The Committee resolved not to grant the commission. Mr. Howley then made application to the Committee for a few days time, but the Committee refused it (*ff*).

Patrick Nowlan's case.

The value of a freehold or leasehold, in right of which the occupying tenant is entitled to vote, is the rent a solvent tenant will give over and above the rent paid to the landlord, and not what the occupying tenant may possibly acquire out of it.

It was agreed to argue in this case, the principle upon which the yearly value of the beneficial interest of a tenant in land, under the 1st and 5th sections of the Irish Reform Act, should be ascertained.

Mr. Austin argued for the petitioners, and referred to the *Longford case* (*g*), *Wetherall* v. *Hall* (*h*), *Rex* v. *Hellingley* (*i*), *Rex* v. *Aston* (*k*), and 6 Geo. IV. c. 57, in order to show that the value of land, in cases of Settlement, had been determined by the rent; *Rex* v. *Attwood* (*l*), and *Rex* v. *Bridgewater* (*m*), cases in which the rent had been the criterion of value in rating land; the stat. 8 Hen. VI. c. 7, 10 Hen. VI. c. 7, 18 Hen. VI. c. 2, *Bedfordshire case* (*n*), *Middlesex case* (*o*), and *Heywood on County Elections* (*p*), to the effect that the value of land is to be determined by the rent a tenant will give for it, and not by what the owner, occupying it himself, may possibly get for it. He also cited 35 Geo. III. c. 29, s. 46 (Irish Act), 10 Geo. IV. c. 8, schedule 6; Coke Lit. 345, 6, cases of beneficial leases, elected to be taken by assignees under the Bankrupt Act, the Scotch Reform Act, sect. 7, *Gumley's Law of Elections* (*q*), *Patrick* v. *Bellew* (*r*), and *Ward* v. *Const* (*s*); the course of the argument being the same as that followed in the *Longford case* (*t*).

Mr. Harrison for the sitting members:—

(*ff*) Perry & K. 240.
(*g*) Per. & K. 189.
(*h*) 2 Lud. 588.
(*i*) 10 East, 41.
(*k*) 6 M. & S. 54.
(*l*) 6 B. & C. 277.
(*m*) 9 B. & C. 68.
(*n*) 2 Luders. 449.
(*o*) 2 Peck. 104.
(*p*) p. 86.
(*q*) Appendix, p. 3.
(*r*) Hudson on the Elective Franchise in Ireland, 65.
(*s*) 9 B. & C. 652; and see *Rex* v. *Joddrell*, 1 B. & Ad. 403.
(*t*) Per. & K. 189.

It may be admitted that the value of land is generally the annual rent that it will produce; but rent is not in every case the sole criterion of value. In determining questions of compensation, other circumstances than the amount of rent paid are usually taken into consideration.

The only two statutes that it is necessary to refer to are, the 10 Geo. IV. c. 8, and the Irish Reform Act. By the 7th section of the 10 Geo. IV. the assistant barrister is directed to inquire into the amount of the rent a solvent person would give for the land in respect of which the tenant claims to be registered, over and above the rent and charges payable for it. This Act was passed in 1830, and immediately afterwards followed the Irish Reform Act, into which three-fourths of the former Act are copied. In order, therefore, to ascertain if it was intended that the rule of value mentioned in the 10 Geo. IV. should be applied to the cases arising out of the Reform Act, it is only necessary to compare their respective clauses.

Mr. Harrison then read and contrasted the following clauses of the two Acts :—

10 Geo. IV. c. 8.

Section VI. And be it enacted, that at each such session the names of the persons contained in such lists shall be severally called by the clerk of the peace, and each person so called, who shall claim to register any freehold at the annual sum of £20 or £10, shall produce in open Court, before such assistant barrister, the deed, lease, or instrument, duly stamped, by virtue of which such person shall claim *such freehold;* or in case he shall not claim by virtue of any deed, lease, or instrument, then such person shall otherwise establish his title *to such freehold;* and such person shall

2 & 3 Will. IV. c. 88.

Section XVI. And be it enacted, that at such special session, the clerk of the peace, or his deputy, shall call the names of the persons contained in such list *in alphabetical order, and shall again, twice at least during such sessions, call over the names of all such persons as did not appear upon such first calling, and that each* claimant's *case shall be heard in the order of his appearance;* and that each person so called shall produce in open Court, the deed, lease, or instrument, *if any,* duly stamped, by virtue of which he shall claim *to be registered; or shall, by his own oath or otherwise, as the as-*

also make it appear *that a solvent and responsible tenant could afford to pay fairly and without collusion for the same, the annual sum of* £20 *or* £10, *as the case may be, as an additional rent, over and above all charges, save such as are hereinbefore excepted, and over and above any rent to which the person so claiming to register such freehold may be liable in respect of the same.*

Section VII. And be it enacted, that such assistant barrister shall inspect and examine every deed, lease, or instrument so produced, and investigate *the title so made, and also the title which any claimant shall in any other manner seek to establish,* and shall determine *whether the same is or is not sufficient to entitle the person claiming thereunder to an estate of freehold;* and shall *also* examine and inquire, as well by the oath of the person so claiming, as by any evidence offered in support of or in opposition to such claim, *whether a solvent and responsible tenant could afford to pay fairly and without collusion, as an additional rent for such freehold, the annual sum of* £20 *or* £10, *as the case may be, over and above all charges, save such as are hereinbefore excepted, and over and above any rent to which the person so claiming may be liable in respect of the same;* and shall also inquire, by any of the means aforesaid, into the truth of the several *assistant barrister shall require, sufficiently account for the non-production thereof;* or if he shall not claim by virtue of a deed, lease, or instrument, *or is disabled from producing such deed, lease, or instrument,* then such person shall otherwise establish *his right to be registered as such voter pursuant to his said notice, according to the provisions of this act;* and such person, *if claiming as a freeholder or leaseholder, or householder,* shall also make it appear *that the property in respect of which he seeks to be so registered is of the value and nature by this act prescribed, and that he is otherwise duly qualified to be registered according to the provisions of this act.*

Section XVII. And be it enacted, that the assistant barrister *or chairman* shall inspect and examine every deed, lease, or instrument so produced, and shall investigate *the claim made thereunder, or otherwise to be registered,* and shall determine *upon the validity or invalidity of such claim,* and shall *and may* examine and inquire, as well by the oaths of the claimants, as by any other evidence offered in support of or in opposition to such claim, *whether such claimant is or is not to be registered as a voter for the county, city, town, or borough to which his claim shall relate;* and in case of any claim in respect of the freehold, leasehold, or household property, whether the same be of the value and nature *respectively hereby prescribed and required;* and shall also inquire, by any of the means aforesaid, *as he shall think fit,* into the truth of the several particulars *required by the provisions of this act,* or required to be stated in any oath

particulars required to be stated in the oath hereinafter prescribed to be taken for *the* registry *of such freehold.* by such claimant hereinafter prescribed to be taken for *such* registry.

The preamble of the latter act declares it to be expedient to extend the elective franchise to many of his Majesty's subjects in Ireland who have not heretofore enjoyed the same. In extending the franchise it included leaseholders, and removed some of the impediments to the qualification of freeholders. If the criterion of the value of the qualification in the two acts was to be the same, why were not their provisions regarding it identical? The former Act was evidently before the framers of the latter one, and if the previous rule of value was to be continued, why is it not expressed in the Reform Act? The Reform Act entirely omits the rule by which the value was directed to be ascertained by the 10 Geo. IV. c. 8, and the oaths prescribed in the two acts to be taken, materially vary. A freeholder, according to the oath in Schedule VI. of the former Act, was to swear "that he had a freehold of the clear yearly value of £10 above all charges payable out of the same, except only public or parliamentary taxes, county, church, or parish cesses or rates, and cesses on any town lands or division, &c., and that a solvent and responsible tenant could, as I verily believe, afford to pay for the same, as an additional rent, fairly and without collusion, the annual sum of £10 over and above all rent to which I am liable in respect thereof." According to the oath in Schedule C. of the Reform Act, the freeholder is to swear that he has a freehold of the clear yearly value of £10 over and above any rent and charges payable out of the same, except only public or parliamentary taxes, county, parish, or church cesses or rates, and cesses on any lowland, &c.: and the oath to be taken by the leaseholder in this respect is the same. The clear yearly value referred to in the oath contained in the Reform

Act, is not that mentioned in the 6th and 7th sections of the former Act; but the clear yearly value of the beneficial interest mentioned in the 1st and the 5th sections of the Reform Act.

Beneficial interest means the value of the land to the tenant, and not that he is willing to hold his land at a higher rent, or that he, though a solvent person, can afford to pay for it an increased rent. The words "beneficial interest" have a meaning, when connected with the holding of land, that is plain and obvious. The Act, when it regulates the conditions of the borough franchise, simply speaks of clear yearly value, because a house is unproductive, and the whole value of it is estimated in its rent; the good-will in a trade, which sometimes increases the sum paid for a house, not being in the house, but created by a previous trader. But how different is the position of a farmer from that of a householder. After deducting the expenses of cultivation, there is a profit derived to him from the land out of which he subsists, and out of which he receives the interest of his capital. This it is which, to him, constitutes a beneficial interest, and meets that condition in the possession of the franchise, which can rarely, under any other construction of the law, be complied with.

The rule for ascertaining the actual value of the land, or the rent that will be given for it, laid down in the *Bedfordshire case* and followed in the *Middlesex case*, need not be disputed. If the rent that this voter ought to pay was to be ascertained, the principle of those cases would apply. To fix the yearly value of the land, the rent that it is worth must be determined. But here it is not the clear yearly value that is to be ascertained, but the beneficial interest which the tenant himself derives from his own occupation. If the legislature had intended the expressions "value of the beneficial interest" to imply the yearly rent the land was worth above the rent paid, why was not this intention ex-

pressed, and why were the plain expressions of the former Act changed? The clear yearly value of property is, also, so frequently mentioned in the Reform Act, that "beneficial interest" must mean something distinguished from the yearly value, and evidently refers to considerations of value peculiar to the tenant, and distinct from any that would affect a third party in fixing the annual rent of the land.

It frequently occurs that the trustees, under settlements of land, are directed to make leases at the most improved yearly rents. If the construction contended for by the petitioners is correct, none of these leases can confer a right to vote. The tenant may expend a large capital upon his land, and derive a profitable return upon his investment; but his enjoyment of the franchise is prevented by the terms under which his lease is granted. No matter how large may be the sum he receives upon the capital he invests, or how large the amount of his investments may be, his right of voting is said to depend upon his payment of a rent below an amount which can fairly be demanded.

The decision that has been made in the case of *Patrick* v. *Bellew* is certainly against the voter, but that decision is not binding upon this Committee.

If it is admitted that the value of the tenant's beneficial interest in the land is to be estimated by the rent a solvent person will pay above the rent already paid, this consequence must follow: that at the expiration of all existing leases, the leasehold franchise in Ireland will be annihilated. As soon as the fair rent a solvent person can pay is demanded from the tenant, his right of voting is lost. The act which was intended permanently to extend the franchise, will thus be construed to exclude, in the course of time, the whole of a very numerous class of persons upon whom it confers the right to vote.

The Committee resolved, 1. "That the value of a free- August 6th.

hold or leasehold, in right of which the occupying tenant is entitled to vote, is the rent which a solvent tenant would give for it, over and above the rent paid to the landlord, and not what the occupying tenant himself may possibly acquire out of it.

2. "That Patrick Nowlan's vote be struck off the poll."

Edward Cosgrave's case.

Notice to produce a deed given on July 28, for the 30th of July, bad.

The notice to produce a lease upon July 30 was served upon the 28th of the same month.

This notice, it was contended, was insufficient; *Cricklade case* (*u*); notice not having been given to produce a deed until the day of taking the petition into consideration, parol evidence of its contents was not permitted to be given. *Fowey case* (*x*); notice to produce the title deeds of certain voters, served upon the 14th of February, the Committee being appointed on the 8th, was held insufficient.

On the other side it was argued, that the only question to be considered was, whether reasonable time had been given. The *Cricklade case* related to a notice to a petitioner to produce a deed respecting his qualification. It is the common practice of all tribunals sitting *de die in diem* to issue summons during the pendency of the proceedings.

The Committee held the notice to be insufficient.

Notice to produce a deed, served on the 1st for the 3d of August, bad.

John Farrell's case.

Notice to produce a lease on the 3d of August, served upon the 1st of the same month, held to be insufficient.

Notice to produce a deed, served at the house of the voter, on the voter's brother, sufficient.

William Fenlon's case.

Notice to produce a lease, served at the house of the voter upon the brother of the voter, held to be sufficient (*xx*).

(*u*) Petrie, 523, 528. (*x*) 1 Peckw. 533. (*xx*) *Monaghan case, ante*, 30.

James Kelly's case.

Notice to produce a deed, served at the house of the voter, on a woman temporarily in charge of the children of the voter, and the wife informed of the service before her return home, sufficient.

Notice to produce a lease, served at the house of a voter upon a woman, who, in the absence of the wife of the voter, had temporarily taken charge of the children, held to be sufficient; but in this case the party who served the notice informed the wife, before she returned home, that the notice had been left.

Edward Horahan's case.

Misnomer of the voter in his lease will not prevent an objection to his qualification being considered.

This voter was objected to by the name of Edward Horahan, and in the affidavit of his registry he was named Edward Horahan; but in the lease of the land, in respect of which he was qualified, his name was inserted as Edmund Horahan. Upon account of this variance the hearing of the case was objected to.

Mr. Austin cited *Mayelstone* v. *Lord Palmerstone* (*y*), where it was held, that a lease executed by George Cooke, named, among the parties to the lease, James Cooke, and named in the body of the deed James Cooke, would have been properly declared upon as the lease of George Cook.

The Committee overruled the objection to the hearing of the case.

James Curren's case.

The Christian name of the voter was James, but the affidavit of his registry was signed with his mark, and the name, Patrick Curren, written by it.

The Committee overruled an objection to the hearing of this case.

James Brohan's case.

On the 11th of July, 1828, a lease for the term of twenty-one years was granted by the Bishop of Ferns

(*y*) 1 Moody & Mal. 6.

and Leighlin to Mr. Vigors, and upon August 7, 1832, a new lease was granted for twenty-one years of the lands comprised in the former lease. Part of the land included in these leases was sub-let by Mr. Vigors to the voter, by a lease dated in September, 1832, and the voter was registered in October, 1832. The voter had occupied the lands included in his lease for more than twelve months prior to his lease being made, and he had received the promise of his lease from Mr. Vigors more than two years before the date of the second lease made by the Bishop of Ferns to Mr. Vigors.

Mr. Austin was heard to argue against the vote, and cited the 1st and 13th sections of the Irish Reform Act to show that the voter ought to have been in occupation under his lease six months previous to the time of his being registered. The purpose of the provisions in the Irish Reform Act, requiring six months' occupation, was to prevent fraud, and especially in the case of leaseholds occasionality. Mr. Vigors might have gone to his tenants and have offered to grant to them leases upon condition of their voting for him, and it was against the possibility of occurrences of this nature that the act provides.

The voter had no equitable title to his lease under the promise that was made to him, and under an equitable title to a lease the voter could not be registered. It is only under a lease actually executed that a tenant for years can vote. In this case there were no circumstances to give the tenant an equitable title to a lease; if he had an equitable title, it was insufficient, the property being leasehold, to establish his right to be registered; and under the lease he obtained he ought to have been in occupation six months before he was registered; *Galway County case* (*z*).

Mr. Howley argued in support of the vote.

(*z*) P. & K. 513, 514.

The Committee resolved, "That James Brohan's vote be struck off, inasmuch as no person under the Reform Act is entitled to be registered as a 10*l.* leaseholder unless the lease has been *bonâ fide* and duly executed and delivered to the applicant at least six months previous to his coming forward to be registered."

About sixty names were then struck off the poll, the leases being dated in August, September and October, 1832.

Michael Byrne's case.

It must be proved to the satisfaction of the Committee that the objection to a vote is *bonâ fide* raised at the time of the registration.

This voter was the first whose qualification was sought to be impeached by the sitting members. Witnesses were called to prove, in compliance with the resolution of the Committee (*a*), that he was objected to at the time of registration. One witness recollected that the voter was examined before the Revising Barrister, and that questions were asked respecting the value of his qualification, but did not recollect if he was registered; and another witness, a counsel employed on the part of one of the sitting members at the time of the registration, stated, that he examined respecting objections that were suggested to him in each case, from time to time, with a view to destroy the vote, but he had no list of the names of persons whose title to register he opposed, having generally written them on a brief, together with the objection, and did not know what had become of the brief. Nearly every question he examined into related to value.

Mr. Austin.—It is not shown that any objection was taken to this voter before the Revising Barrister. The meaning of the resolution of the Committee must be, that an objection shall be proved to have been distinctly made and supported; unless it can be shown that the means adopted to bring it before the barrister had failed, or that the circumstances of the county prevented the production of witnesses. The intention of the Com-

(*a*) *Ante*, p. 457.

mittee must have been to confine themselves as a Court of Appeal upon the decisions of the Revising Barrister. There is no meaning in the resolution, if it is sufficient for a party merely to get up and say that he objected to a claimant, and to take no other steps. It must be proved that each person was specifically objected to; that the specific objection to him was discussed; and that a decision was had upon it. We accounted for the absence of witnesses in many cases to the state of the county; we came here prepared to prove that we had done every thing that we could to support, before the the Revising Barrister, every objection.

The objections represented to have been made by the other side before the barrister were chiefly upon questions of value, and what do the witnesses call an objection? Why, merely getting up and asking a question. They have failed in proving that they brought or examined any witnesses to prove or support any objection; and they have not attempted to show that witnesses might not have been produced. What evidence, then, is there of any specific objection being taken? The witnesses can scarcely be said to identify the voter. It is not recollected at what time the objection was made, or whether the party was finally registered or not. It is simply recollected that questions respecting the value of the qualification were frequently put, and that all persons who were to be registered were supported by counsel on one side, and examined by counsel on the other. It is not shown that any objection was taken in the way referred to by the resolution of the Committee.

Mr. Pollock.—The resolution of the Committee simply refers to the fact of an objection being taken before the Revising Barrister, and the question is, whether the examination respecting value made in opposition to this voter, was not such an objection as entitles us to proceed with this case. It is not a part of our business to prove that the objection was supported by witnesses; it is sufficient that an objection was made.

[Lord Sandon. — Evidence of producing witnesses would prove the *bona fides* of the objection.]

Mr. Austin, in reply.

The Committee will require, not that it shall be shown that an objection merely was made, but that it was *bonâ fide* made; otherwise this resolution is nugatory.

The Committee came to this Resolution:—"That it has not been proved to the satisfaction of the Committee that the objection to the vote of Michael Byrne was *bonâ fide* raised at the time of the registration (*b*).

After the petitioners have established a majority in their favour, and the defence of the seat is abandoned, the Committee will not continue the scrutiny.

The defence of the seat was abandoned, and upon this being announced, Mr. Serjeant Spankie stated, that there were ten voters objected to by the petitioners, upon the ground of the insufficiency of the value of their respective qualifications, and that unless their names were struck off the poll by consent, he should apply to the Committee to enter into the consideration of the cases. Mr. Pollock objected to such a course being pursued, and the Committee declared that it was their opinion that the cases ought not to be brought forward (*c*).

It was then resolved:—

"That Nicholas Aylward Vigors, esquire, and Alexander Raphael, esquire, are not duly elected knights to serve in this present parliament for the County of Carlow.

"That Thomas Kavanagh, esquire, and Henry Bruen, esquire, are duly elected, and ought to have been returned knights to serve in this present parliament for the said county."

And it was also resolved, that neither the petition, nor the opposition to it, was frivolous or vexatious, and that the poll taken at the election had been altered, by

(*b*) *Ante*, 412. (*c*) *Monaghan case, ante*, 43.

striking off the names of 104 persons, (mentioned in the resolution by name,) as not having any right to vote, and who ought not to have been placed upon the register of voters.

THE FOLLOWING DECISIONS HAVE BEEN MADE UPON CASES RESERVED FOR THE CONSIDERATION OF THE TWELVE JUDGES IN IRELAND.

FREEMEN.

Non-resident freemen are not entitled to be registered for a county of a town in Ireland.—*Tisdale and Elliott's cases*, Alcock's Reports, 1.

It is competent at the time of registration to investigate the admission of a freeman, claiming to register, under 2 & 3 Will. IV. c. 88.—*Coulter's case*, Alc. R. 7.

Certain persons were elected honorary freemen of the borough of Coleraine, in 1797, and the vote of their election was entered in the corporation books, but they were not sworn, nor did any of them make any attempt to complete his admission, until after the 30th of March, 1831. The survivors of them then, for the first time, paid the stamp duty to the collector of stamps for the district, and were afterwards admitted and sworn. Held,

1. That they were not entitled to be registered.

2. That the proper amount of stamp duty was that payable at the time of their admission, and not that payable at the time of their election.—*Case of the Freemen of Coleraine*, Alc. R. 9.

Burgesses elected since the passing of the 2 & 3 Will. IV. c. 88, sect. 9, are entitled to be registered.—*Sir Thomas Molyneux's case*, Alc. R. 19.

FREEHOLDERS.

A freeholder, or a leaseholder, is not entitled to be registered under the 2 & 3 Will. IV. c. 88, sect. 13, unless he shall have been in possession, under the title

by virtue of which he seeks to register, for six calendar months, unless in the cases of descent, &c. excepted in the act.—*Flynn's case*, Alc. R. 3.

Exclusive possession for sixteen years of a portion of a common, acquired by encroachment, does not confer a title to be registered as a freeholder.—*Larissey's case*, Alc. R. 5.

Adverse possession for upwards of twenty years of a portion of a common of the annual value of 10*l.* confers upon the occupier a title to be registered as a 10*l.* freeholder, notwithstanding the enactment of the 31 Geo. III. c. 38.—*Doyle's case*, Alc. R. 36.

Where a person claims to register a 40*s.* freehold in respect of a house, the house must be of that value, and if he divides the house and occupies a portion of it, that portion must be of the value of 40*s.*—*Stoke's case*, Alc. R. 6.

Forty shilling freeholders in counties of cities and counties of towns, are not entitled to be registered under the 2 & 3 W. IV. c. 88, unless they shall have been previously registered under the provisions of the 4 Geo. IV. c. 55, within eight years.—*Richardson's case*, Alc. R. 21.

A lease for lives "provided the interest of the lessor in the demised premises should so long continue," is not *primâ facie* evidence of the title of the lessee to be registered as a freeholder.—*Murphy's case*, Alc. R. 45. Per *Crompton*, J.

A lease for lives "if the interest of the lessor should so long continue," was held to be *primâ facie* evidence of the title of the lessee to be registered as a freeholder; but the party opposing the claim was permitted to go into evidence to impeach the title.—*Cogan's case*, Alc. R. 46. Per *Perrin*, J.

1. The value of the qualification which entitles a party to register either as a freeholder or a leaseholder, in a county at large, under the 2 & 3 Will. IV. c. 88, is the

same as was prescribed in the case of a freeholder by the 10 Geo. IV. c. 8; and therefore the criterion of value is what a solvent and responsible tenant will pay over and above the rent and charges payable in respect of the qualification.

2. The oath prescribed by the 10 Geo. IV. c. 8, schedule 7, is not abrogated by the 2 & 3 Will. IV. c. 88.

3. Where upon the trial of appeals under the 2 & 3 Will. IV. c. 88, s. 24, the juries were sworn in the cases of freeholders and leaseholders, according to the form of oath prescribed by the 10 Geo. IV. c. 8, schedule 7; and the learned judge directed the jury, in each case, to find whether a solvent and responsible tenant could afford to pay for the holding, fairly and without collusion, as an additional rent, the annual sum at which the claimants fixed the value of the qualification in respect of which he sought to be registered: Held, by seven judges against five, that the proper form of oath had been adopted; and held, by ten judges against two, that the direction of the judge was right.—*Glennon's case*, Alc. R. 55.

HOUSEHOLDERS.

1. Joint occupiers, not joint tenants, held not entitled to be registered under the 2 & 3 Will. IV. c. 88, ss. 5 & 7.

2. Two joint tenants occupy the same house, of the clear yearly value of 20*l.*, and are in the actual *occupation* thereof, not entitled to register.

3. Two joint tenants occupy the same house, of the clear yearly value of 10*l.*, and are in the actual *possession* thereof, not entitled to register.

Upon the two first points the judges were unanimous.—*Case of Joint Occupiers*, Alc. R. 2. See *Joint Tenants*.

Where the claimant had possession of a house for

more than a year previous to the time of registry, but had been absent for some months of the period prescribed by the 2 & 3 Will. IV. c. 88, sect. 7, during which time he carried on business in the house in his own name: Held, that the claimant was not entitled to register.—*M'Streavy's case*, Alc. R. 6.

The owner of a house in a town, who himself occupies a part of it, of the annual value of 10*l.*, is entitled to register, though a part of it is let to lodgers.—*Phillip's case*, Alc. R. 20.

Where the owner of a house lets part of it in lodgings, and retained the residue for his own exclusive use, but the part of the house retained by the owner was not of the clear yearly value of 10*l.* Held, by eleven judges against one, that the owner was entitled to be registered.—*Duigenan's case*, Alc. R. 114.

The claimant occupied the ground front apartment of a house, as a shop, at a rent of 20*l.*; the entrance to the shop was through a hall of the house; into that hall there were three doors—namely, the hall door, opening into the street; the shop door, a few feet from the hall door; and a door opening to the staircase and apartments of the house. There was no door immediately opening from the shop into the street. The landlord did not reside in the house, and the other apartments were let to lodgers. The street door lay open all day, affording a free entrance and exit to the claimant and his customers, as also to the lodgers of the house, but was locked at night, and one of the lodgers, as well as the claimant, had each a key of it. The taxes were paid by the landlord; and the claimant, in common with the lodgers, had the use of a kitchen, and of the water supplied to the house. Held, by the judges, that the claimant was entitled to be registered. The claim had been rejected by the Revising Barrister, on the ground that the claimant "had not an exclusive right to the outer door."—*Kearney's case*, Alc. R. 22.

Where the notice of registry was in respect of a qualification arising out of "a counting-house and stores," and it appeared that the counting-house alone was not worth 10*l.* yearly, but the counting-house and stores together were worth much more than 10*l.* yearly: it was held by the majority of the judges, that the claimant was not entitled to be registered.—*Sweetman's case,* Alc. R. 27.

Where a person, since the passing of the 2 & 3 Will. IV. c. 88, became the occupier of a house in a borough, above the value of 5*l.* and not of the value of 10*l.* Held, not entitled to be registered.—*M'Cabe's case,* Alc. R. 31.

JOINT TENANTS. See HOUSEHOLDERS.

Joint tenants who hold by a lease made prior to July, 1823, held entitled to be registered, under 10 Geo. IV. c. 8, without swearing to the qualification in value above the rent to which they were jointly liable, but merely above such portion of it as each of them, *inter se,* was liable to.—*Cunningham's case,* Alc. R. 3.

LEASEHOLDERS. See FREEHOLDERS.

REGISTRATION.

The power of the Assistant-Barrister, or Chairman, to adjourn any session for the registry of votes; and the power of the Lord Lieutenant to direct him to adjourn and continue the said session, either at the same place, or at any other place or places within the said county, is not restricted to the first or special session for the registry of voters, holden under the 2 & 3 Will. IV. c. 88.—*Kennedy's case,* Alc. R. 47.

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